TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 118

CAPITOL GREYHOUND LINES, PENNSYLVANIA GREYHOUND LINES, INC., AND RED STAR MOTOR COACHES, INC., APPELLANTS,

vs.

ARTHUR H. BRICE, COMMISSIONER OF MOTOR VEHICLES, STATE OF MARYLAND, BALTIMORE, MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED JUNE 13, 1949.

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IN SUPERIOR COURT OF BALTIMORE CITY, STATE OF MARYLAND

APPENDIX TO APPELLANT'S BRIEF NO. 81

OPINION—April 23, 1948

SHERBOW, J.:

Three interstate bus lines filed petitions for writs of mandamus against the Commissioner of Motor Vehicles to compel the issuance of certificates of title to motor buses without the payment of the 2% titling tax imposed by Section 25A of Article 66½ of the Code, 1947 Supplement.

Demurrers have been filed raising the following questions:

1. Does the 2% titling tax violate the commerce clause of the federal constitution as applied to interstate carriers?

2. Does Section 218 of Article 81 of the Code, as amended by Chapter 326 of the Acts of 1947, prohibiting the imposition of "additional fees, licenses or tax," include the 2% titling tax?

I

By various provisions of the law an interstate carrier, operating within the State of Maryland, is required to register its vehicles in this State.[1] Motor vehicle owners using vehicles in the interstate transportation of passengers over State roads are required to obtain permission covering such operation from the Public Service Commission of Maryland.[2] The carrier cannot register its vehicles or operate over Maryland highways until a certificate of title is obtained for each vehicle.[3] Payment

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[1] Code Article 66½, Sec. 21.

[2] Article 81, Sec. 218, as amended by Chapter 326 of the Acts of 1947.

[3] Article 66½, Sec. 22, as amended by Chapter 17 of the Acts of 1947.

of $1.00 is required for the registration card and certificate of title.[4]

In addition a "seat mile tax" is imposed. This is a levy equal to one-thirtieth of a cent for each passenger seat multiplied by the total number of miles travelled over the State roads.[5]

The Department of Motor Vehicles seeks to require these interstate carriers to pay an excise tax of two per cent of the fair market value of every vehicle upon the issuance of every original certificate of title, and for every subsequent certificate in the case of sales of the vehicles, in accordance with the provisions of Section 25(a) of Article 66½, as amended by Chapter 560 of the Acts of 1947.[6]

The titling tax was first levied in Maryland in 1935 at the rate of one per cent. and the proceeds were paid into a special account in the State Treasury called the "State Emergency Relief Fund."[7] Later the Act was amended to provide that the proceeds be paid into the "State Fund for Aid to the Needy."[8] In 1939 the levy was increased to two per cent, and the proceeds were paid into the general funds of the State.[9]

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[4] Article 66½, Sec. 25.

[5] Article 81, Sec. 218, as amended above.

[6] The Section reads:

> "In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued."

[7] Chapter 539, Acts of 1935.

[8] Chapter 3, Acts of 1936.

[9] Sec. 74, Chapter 277, Acts of 1939.

Chapter 560 of the Acts of 1947 made several important changes in the law. The tax was made applicable not only to original title certificates but to subsequent transfers. The proceeds were to be used for servicing the debt on State highway construction bonds, and the balance, if any, went to the construction fund of the the State Roads Commission.

[fol. 5] Thus it appears that in 1947, for the first time, the proceeds of this excise tax on motor vehicles were to be used specifically for roads purposes. Prior to 1947 the petitioners and all other interstate carriers similarly situated were not required to pay the tax.

When the titling tax was first enacted an effort was made by the Motor Vehicle Commissioner to collect the tax from interstate carriers. Mandamus proceedings were instituted by the Pennsylvania Greyhound Transit Company in the Court of Common Pleas on February 12, 1936, to compel issuance of certificates of registration without payment of the tax. The petition alleged that no part of the proceeds was used directly or indirectly in connection with the State's roads or for the expenses of the office of the Commissioner of Motor Vehicles. After considering the law, the Attorney-General instructed the Commissioner to issue the certificates without payment of the tax and thereupon the Court granted the writ of mandamus as prayed, stating in the order that it was of the opinion that the law did not apply to any motor vehicle bus operating in interstate commerce.

By the 1947 amendment the proceeds will be used for roads purposes, and the interstate carriers now seek to prevent the State from collecting the two per cent. titling tax from them.

The Court must decide whether this excise tax constitutes a direct and material burden on interstate commerce. In other words, may this tax lawfully be imposed on public passenger motor vehicles using the highways of Maryland in interstate commerce? The language of the statute itself is all-inclusive; it makes no exception in favor of interstate carriers.

The commerce clause of the federal constitution has caused more litigation and controversy than any other constitutional provision. Interstate carriers may be required to pay registration, licensing and transportation taxes of various kinds in each State of operation.

Many cases have been decided by the Supreme Court dealing with the question of whether the States may lawfully impose a tax on interstate carriers.

A non-discriminatory tax, not confiscatory in amount, fixed by a uniform, fair and practical standard, was upheld as constituting no burden on interstate commerce in an early case arising out of the Maryland requirement that non-residents obtain and pay registration fees if they used our highways.[10] In the absence of actual discrimination the State may tax interstate carriers by a method different from that applied to intrastate carriers.[11]

States may impose taxes for the use of the roads and enforcement of regulations, whether on the basis of gross ton mileage,[12] or a flat charge per vehicle,[13] or on vehicles engaged exclusively in interstate commerce.[14] More than one tax may be imposed and the proceeds may go into the State's general fund, provided the taxes are fair and reasonable, non-discriminatory, and are compensation for the use of the highways.[15]

A flat tax, substantial in amount, the same for buses used continuously in local service as for interstate buses making one trip daily, was not upheld, the Court stating that such a tax "could hardly have been designed as a measure of the cost of value of the use of the highways."[16]

A privilege tax imposed by the State of Tennessee on interstate bus operators graduated according to the carrying capacity of the vehicle, and amounting to about $500 for a medium size vehicle, was held invalid as applied to interstate operators. In the case of Interstate Transit, Inc. v. Lindsey, 293 U. S. 193 (1931), the Supreme Court, speaking through Mr. Justice Brandeis, said:

> [fol. 6] "A detailed examination of the statute under which the tax here challenged was laid makes it clear

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[10] Hendrick v. Maryland, 235 U. S. 610 (1915).

[11] Interstate Buses Corp. v. Blodgett, 276 U. S. 245.

[12] Continental Baking Co. v. Woodring, 286 U. S. 352.

[13] Aero Mayflower Transit Co. v. Georgia P. S. C., 295 U. S. 285.

[14] Dixie Ohio Express Co. v. State Rev. Comm., 306 U. S. 72.

[15] Aero, etc., v. R. R. Comms., 332 U. S. 495 (1947).

[16] Sprout v. South Bend, 277 U. S. 163.

that the charge was imposed not as compensation for the use of the highway but for the privilege of doing the interstate bus business. • • •

"It is suggested that a tax on buses graduated according to carrying capacity is common and is a reasonable measure of compensation for use of the highways. It is true that such a measure is often applied in taxing motor vehicles engaged in intrastate commerce. • • • But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only as compensatory, the charge must be necessarily predicated upon the use made, or to be made of the highways of the State. In the present act the amount of tax is not dependent on such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except insofar as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed or the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate buses."

In the recent case of Aero Transit Co. v. Commissioners, 332 U. S. 495, decided December 8, 1947, the Supreme Court upheld two Montana levies. One was a flat tax of $10.00 for each vehicle operated over the State's highways, and the other was a quarterly fee of one-half of one per cent of the motor carrier's gross operating revenue with a minimum annual fee of $15.00 per vehicle. The tax was declared expressly to be laid "in consideration of the use of the highways of the State," and in addition to all other licenses, fees and taxes. The Montana Supreme Court held that "gross operating revenue" meant only such revenue as was derived from the carrier's operations within Montana, not outside that State. The Supreme Court of the United States limited its consideration of the "gross revenue" tax to the flat $15.00 minimum fee because of the doubt raised

as to the basis of calculation above that figure. The Court said:

> "With the issues thus narrowed, we have, in effect, two flat taxes, one for $10.00, the other for $15.00 payable annually upon each vehicle operated on Montana highways in the course of appellant's business, with each tax expressly declared to be in addition to all others and to be imposed 'in consideration of the use of the highways of this State.'
>
> "Neither exaction discriminates against interstate commerce. Each applies alike to local and interstate operations. Neither undertakes to tax traffic or movements taking place outside Montana, or the gross revenues from such movements or to use such revenues as a measure of the amount of the tax. * * *"

In this case the Supreme Court held that it was immaterial that the proceeds of the two taxes go into the State's general fund for general State purposes. The taxes were "laid for the privilege of using the highways" and their aggregate amount was less than similar taxes already sustained.

These cases and the many others cited by counsel in their excellent and complete briefs, and in argument, set out the principles to govern the Court in determining whether or not the Maryland two per cent titling tax is valid as applied to these interstate carriers.

This excise tax is based on the fair market value of the vehicle when titled. The amount of the tax bears no rela- [fol. 7] tionship, reasonable or direct, to the use of the highways of the State.

Wear and tear on the highways, mileage travelled, weight of the vehicles, carrying and earning capacity, are not the yardstick used for measuring the impost, but only the value of the vehicle when titled.

It is not an annual tax falling on all in like position equally. It is paid only when title changes. A carrier making frequent replacements of its equipment is penalized in favor of one who keeps old vehicles on the highways.

The tax is a heavy one, and on present day costs ranges from $400 to $600 as each new vehicle is titled. To avoid the impost carriers may well utilize new equipment elsewhere transferring old and less valuable vehicles to their Maryland run.

The striking inequalities of the application of the tax are shown when we compare each company's operation in Maryland with the entire route travelled, as shown by the following table:

	Entire Route Travelled	Operation in Maryland
Red Star	120 Miles	64 Miles
Capital	496 Miles	9 Miles
Greyhound	172 Miles	41 Miles

If each carrier purchased a bus for $20,000 and paid $400 titling tax, the inequalities are self-evident. If Red Star purchased a second-hand bus for $10,000 and used it over 64 miles of Maryland roads it would pay $200 tax. If Capital purchased (as it actually did) a vehicle costing slightly over $25,000, it would pay $500. Red Star operates over 64 miles of Maryland roads and Capital only 9 miles in Maryland.

When the tax is paid again depends not on conditions arising directly from operations in Maryland, but a host of other factors, including general economic conditions, availability of equipment, the financial condition of the individual carrier, etc.

The disparity in the impact of the tax becomes even more apparent when revenues derived from interstate operations in Maryland are considered. The data furnished the Court is not complete, but it shows clearly that based upon passenger revenues and passengers carried, the amount of the tax bears no reasonable relationship to the use of Maryland highways.

It may be argued that the tax is non-recurring as applied to a particular vehicle, and when measured over the life of the vehicle may not be burdensome. But the tax is on the *value* of the vehicle, not its *use* on the highways. The effect on each carrier is different and it varies from year to year; not according to mileage in Maryland, but to other factors.

It is not the frequency of use that determines the tax, nor revenues, nor anything else pertaining to highway operations, only when it is purchased and for how much.

Such a tax, aside from being discriminatory and bearing no relationship to highway use, is a burden on interstate commerce. The tax is high and if valid in Maryland may well be imposed elsewhere. States, like all other political

sub-divisions, are constantly seeking new sources of revenue. Such an impost when applied to interstate commerce may well become a most serious economic burden. A carrier operating in several States and required to make heavy replacements might well find itself unable to do so because of the impact of the tax in several States.

Viewing the situation realistically, we must also bear in mind that while the tax was only one per cent, when first levied and was increased to two per cent., after four years, it may be increased again. The history of taxation, especially gasoline and income taxes, shows that steady [fol. 8] and sometimes precipitate increases occur, and while they may be decreased, they are rarely withdrawn.

The tax imposed on interstate carriers and approved by the Courts all relate to use of the highway with the tax measured by some fair standard, or where the tax or fee is so small as to be a fair contribution to the cost of administration or maintenance of the roads system. Registration fees are on an annual basis; gasoline taxes are based in practical effect on consumption and use. These and all other taxes that have been upheld are paid by all similarly situated at the same time. In no instance have counsel or the Court been able to find such a tax levied on interstate carriers based on the *value* of the vehicles.

The Court finds that as applied to these interstate carriers and others similarly situated the tax is invalid and the relief prayed will be granted. An appropriate order will be signed when presented.

II

Section 218 of Article 81, dealing with motor vehicles used in interstate transportation, provides that after the levying of the taxes therein mentioned "no other additional fees, licenses or tax, shall be charged by the State or any County or municipal subdivision of the State except the property tax and gasoline tax on gasoline purchased in Maryland in respect to such vehicles or their operation."

Section 293 of Article 56 is to the same effect and is applicable to intrastate operations. Counsel urge that these provisions forbid the imposition of the 2% titling tax. The Court's views having been expressed, holding this titling tax invalid as applied to interstate carriers, and the titling tax applicable to intrastate vehicles not being before the Court, it becomes unnecessary to discuss this contention.

[fol. 8a] IN SUPERIOR COURT OF BALTIMORE CITY

PETITION OF PENNSYLVANIA GREYHOUND LINES, INC., FOR WRIT OF MANDAMUS AND ORDER GRANTING SAME

The Petition of Pennsylvania Greyhound Lines, Inc., a body corporate (hereinafter referred to as the "Petitioner"), by Miles, Walsh, O'Brien & Morris, its attorneys, respectfully represents:

1. That the Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and has duly qualified as a foreign corporation authorized to do business in the State of Maryland and that W. Lee Elgin is Commissioner of Motor Vehicles and, in such capacity, is the administrative head of the Department of Motor Vehicles of the State of Maryland.

2. That the Petitioner was incorporated for the purpose of engaging in the public transportation of passengers for hire by motor vehicles and is now so engaged and since April 25, 1930 has, as a part of the conduct and operation of its business as a common carrier by motor vehicle, established, maintained and operated, in accordance with authority vested in it pursuant to certain certificates of public convenience and necessity granted by the Interstate Commerce Commission (a Federal regulatory body with authority to regulate and control certain operations of the Petitioner), in its own behalf and in conjunction with Pennsylvania Greyhound Lines of Virginia, Incorporated, a corporation organized and existing by virtue of the laws of the Commonwealth of Virginia, its wholly owned subsidiary, a passenger bus line operating daily between the City of Philadelphia in the State of Pennsylvania and the City of Norfolk in the State of Virginia, a distance of approximately 245.3 miles; that the Petitioner operates that portion of the route from the City of Philadelphia and the Maryland-Virginia State Line at a point approximately one-half mile south of Beaver Dam, Maryland, a distance of approximately 172.6 miles and, that as a part of the necessary route over which said last mentioned line is [fol. 9] operated pursuant to said authority of the Interstate Commerce Commission, the Petitioner operates its passenger busses over 41 miles of State, State-Aid and improved County roads of Maryland, including operations

over streets and highways of incorporated towns and cities located within the State of Maryland.

3. That for the period from October 1, 1946 to September 30, 1947, the Petitioner and its wholly owned subsidiary transported 168,684 passengers over the aforesaid route, thereby producing gross revenues of $436,326.92 and that, for the aforesaid period, the Petitioner estimates that 110,324 of said passengers travelled exclusively in interstate commerce in Maryland from (a) points in the State of Maryland to points located out of the State of Maryland, (b) points out of the State of Maryland to points in the State of Maryland and (c) points out of the State of Maryland to other points out of the State of Maryland via roads or highways in the State of Maryland. The Petitioner possesses no authority of the Public Service Commission of Maryland, or any other regulatory agency, authorizing it to transport passengers in intrastate commerce within the State of Maryland; and during the aforesaid period, the Petitioner transported no passengers in intrastate commerce within the State of Maryland.

4. That the Petitioner on or about October 22, 1947, purchased at a cost to it of Twenty-nine Thousand Two Dollars and Sixty Cents ($29,002.60), a public passenger motor vehicle described as a General Motors, Diesel, 37 passenger bus, Model PD-3751, having 6 cylinders and 43.3 horsepower, which the Petitioner desires and proposes to operate over the aforementioned route from Philadelphia to Norfolk and which said vehicle is required in the economic and efficient operation of the public service rendered by the Petitioner as a motor carrier pursuant to the aforementioned authority vested in it by the Interstate Commerce Commission; that Petitioner has made application to the Public Service Commission of Maryland, pursuant to the laws of the State of Maryland, for a permit authorizing it to operate in interstate commerce the aforementioned vehicle over the roads and highways in the State of Maryland embraced within the route heretofore mentioned, and that the said Public Service Commission of Maryland granted the Petitioner the permit so sought.

5. That on or about January 8, 1948, the Petitioner presented the aforesaid permit obtained from the Public Service Commission of Maryland to the Department of Motor

Vehicles of the State of Maryland and at the same time made application in writing, on forms provided by the said Department, for the issuance of a certificate of title for the said public passenger motor vehicle, and tendered to the said Department the sum of One Dollar ($1.00) for the issuance of a certificate of title, as provided in Section 24(e) of Article 66½ of the Annotated Code of Maryland, a prerequisite to the issuance of a registration certificate and distinguishing plates and markers, as provided in Section 218 of Article 81 of the Annotated Code of Maryland, as amended by Chapter 326 of the Acts of 1947, which said registration certificate and distinguishing plates and markers are required by Section 20 of Article 66½ before said public passenger motor vehicle may be operated over State, State-Aid, improved County roads, and streets and roads of incorporated towns and cities in the State of Maryland.

6. That the Department of Motor Vehicles, acting under the instructions of the said Commissioner of Motor Vehicles, refused to accept the Petitioner's application for a certificate of title and the amount tendered in payment therefore was returned to the Petitioner, the said Commissioner of Motor Vehicles thereby unlawfully refusing to issue to the Petitioner a certificate of title for the said motor vehicle hereinbefore referred to. That the Commissioner of Motor Vehicles alleged that the amount tendered was insufficient and that the Petitioner was required by Section 25(a) of Article 66½ of the Annotated Code of Maryland, as amended by Chapter 560 of the Acts of [fol. 10] 1947, to pay, in addition to the aforementioned sums tendered, an excise tax of 2% on the fair market value of the said public passenger motor vehicle which tax would amount to an additional sum of Five Hundred Eighty Dollars ($580.00), said payment being demanded as a condition precedent to the issuance of a certificate of title for said vehicle and therefore to the issuance of a certificate of registration and distinguishing plates and markers therefor although the said Commissioner of Motor Vehicles admitted that the Petitioner had complied with all other requirements entitling it to a certificate of title.

7. That the Petitioner alleges and avers (i) that under no proper construction of the said Section 25(a) of Article 66½, as amended, does such section require the payment, by the Petitioner, under the facts and circumstances alleged

in the foregoing Petition, of a tax of 2% of the fair market value of the said public passenger motor vehicle as a condition precedent to the registration of and the issuance of a certificate of title for said vehicle, and (ii) that under the facts and matters alleged in the foregoing Petition, the said Section 25(a) cannot require the payment of a tax of 2% of the fair market value of the said public passenger motor vehicle as a condition precedent to the registration of and the issuance of a certificate of title for the said vehicle for the reason that Section 25(a), as amended, would thereby impose an unreasonable and unlawful burden on interstate commerce in violation of the Commerce Clause of the Federal Constitution.

Wherefore, the Petitioner alleges that the aforesaid refusal on the part of the Commissioner of Motor Vehicles is improper and unwarranted and the Petitioner respectfully prays that a Writ of Mandamus may be issued and directed to the said W. Lee Elgin, Commissioner of Motor Vehicles, commanding him (i) to accept your Petitioner's application for the issuance of a certificate of title for the said public [fol. 11] passenger motor vehicle and retain the sum of One Dollar ($1.00) being the same sum heretofore tendered the said Commissioner of Motor Vehicles by the Petitioner in connection with the said application, and (ii) to issue to the Petitioner a certificate of title for the aforesaid public passenger motor vehicle in accordance with the provisions of the Annotated Code of Maryland as aforesaid without the payment of a tax of 2% of the fair market value of said vehicle as provided by Section (25a) of Article 66½, as amended.

And your Petitioner will ever pray, etc.

Miles, Walsh, O'Brien & Morris, Attorneys for Petitioners.

ORDER

A Petition for a Writ of Mandamus having been filed in the above-entitled case, the Defendant having demurred thereto, briefs of counsel to the parties having been filed and argument heard thereon, an Opinion of Court having been filed, an Order of Court overruling the Defendant's Demurrer having been entered and an Answer of the De-

fendant admitting all of the allegations of fact in the Petition having been filed, it is, this 14th day of June, 1948, by the Superior Court of Baltimore City

Ordered--

That a Writ of Mandamus directed to the Defendant, W. Lee Elgin, Commissioner of Motor Vehicles of the State of Maryland issue as prayed in the Petition, provided, however, that execution of this Order be stayed pending the final determination of an Appeal by the Defendant to the Court of Appeals of Maryland and, provided further, [fol. 12] that the Defendant be excused from the necessity of filing an appeal bond.

Joseph Sherbow.

IN SUPERIOR COURT OF BALTIMORE CITY

PETITION OF RED STAR MOTOR COACHES, INC., FOR WRIT OF MANDAMUS AND ORDER GRANTING SAME

The Petition of Red Star Motor Coaches, Inc., a body corporate (hereinafter referred to as the "Petitioner"), by Miles, Walsh, O'Brien & Morris, its attorneys, respectfully represents:

1. That the Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland and that W. Lee Elgin is Commissioner of Motor Vehicles and, in such capacity, is the administrative head of the Department of Motor Vehicles of the State of Maryland.

2. That the Petitioner was incorporated for the purpose of engaging in the public transportation of passengers for hire by motor vehicles and is now so engaged and since the year 1938 has, as a part of the conduct and operation of its business as a common carrier by motor vehicles, established, maintained and operated, in accordance with authority vested in it pursuant to a certain certificate of public convenience and necessity granted by the Interstate Commerce Commission (a Federal regulatory body with authority to regulate and control certain operations of the Petitioner) a passenger bus line operating daily between the City of Rehoboth in the State of Delaware and the City of Baltimore in the State of Maryland, a distance of approxi-

mately 120 miles; that as a part of the necessary route over which said last mentioned line is operated pursuant to said authority of the Interstate Commerce Commission, the Petitioner operates its passenger busses over approximately 64 miles of State, State-Aid and improved County roads of Maryland, including operations over streets and [fol. 13] highways of incorporated towns and cities located within the State of Maryland.

3. That for the period June 1, 1947 to November 1, 1947, the Petitioner transported 13,910 passengers over the aforesaid route thereby producing total gross revenues of $21,087.18 and that, for the aforesaid period, 5,035 of said passengers travelling in interstate commerce originated from or were destined for points within the State of Maryland, thereby producing $11,324.41 of the aforesaid revenue. That the Petitioner along the portion of said route within the State of Maryland also transported, pursuant to the authority vested in it by the Public Service Commission of Maryland, passengers travelling in intrastate commerce originating from and destined for points solely within the State of Maryland and that for the aforesaid period of the aforesaid 13,910 total number of passengers transported by the Petitioner, 6,577 were carried from points in the State of Maryland to points also within the State of Maryland thereby producing a gross revenue of $9,015.89 as part of the Petitioner's total gross revenues as aforesaid.

4. That the Petitioner on or about July 18, 1947, purchased at a cost to it of Eighteen Thousand Six Hundred Thirty-Seven Dollars and Fifty Cents ($18,637.50), a public passenger motor vehicle described as a General Motors 1947 deluxe parlor coach bus, Model PDA, Engine No. 47123591, Serial No. PDA 3703177, having 4 cylinders and a seating capacity of 37 passengers, which the Petitioner desires and proposes to operate over the aforementioned route from Rehoboth to Baltimore and which said vehicle is required in the economic and efficient operation of the public service rendered by the Petitioner as a motor carrier pursuant to the aforementioned authority vested in it by the Interstate Commerce Commission, that Petitioner has made application to the Public Service Commission of Maryland, pursuant to the laws of the State of Maryland, for a permit authorizing it to operate in interstate commerce the aforementioned vehicle over the roads and highways in the

[fol. 14] State of Maryland embraced within the route heretofore mentioned, and that the said Public Service Commission of Maryland granted the Petitioner the permit so sought.

5. That on or about January 12, 1948 the Petitioner presented the aforesaid permit obtained from the Public Service Commission of Maryland to the Department of Motor Vehicles of the State of Maryland and at the same time made application in writing, on forms provided by the said Department, for the issuance of a certificate of title for the said public passenger motor vehicle, and tendered to the said Department the sum of One Dollar ($1.00), for the issuance of certificate of title, as provided in Section 24(e) of Article 66½ of the Annotated Code of Maryland, a prerequisite to the issuance of a registration certificate and distinguishing plates and markers, as provided in Section 218 of Article 81 of the Annotated Code of Maryland, as amended by Chapter 326 of the Acts of 1947, which said registration certificate and distinguishing plates and markers are required by Section 20 of Article 66½ before said public passenger motor vehicle may be operated over State, State-Aid, improved County roads, and streets and roads of incorporated towns and cities in the State of Maryland.

6. That the Department of Motor Vehicles, acting under the instructions of the said Commissioner of Motor Vehicles, refused to accept the Petitioner's application for a certificate of title and the amount tendered in payment therefor was returned to the Petitioner, the said Commissioner of Motor Vehicles thereby unlawfully refusing to issue to the Petitioner a certificate of title for the said motor vehicle hereinbefore referred to. That the Commissioner of Motor Vehicles alleged that the amount tendered was insufficient and that the Petitioner was required by Section 25(a) of Article 66½ of the Annotated Code of Maryland, as amended by Chapter 560 of the Acts of 1947, to pay, in addition to the aforementioned sum tendered, an excise tax of 2% on the fair market value of the said public passenger [fol. 15] motor vehicle, which tax would amount to an additional sum of $372.75, said payment being demanded as a condition precedent to the issuance of a certificate of title for said vehicle, and therefore to the issuance of a certificate of registration and distinguishing plates and markers, although the said Commissioner of Motor Vehicles admitted

that the Petitioner had complied with all other requirements entitling it to a certificate of title.

7. That the Petitioner alleges and avers (i) that under no proper construction of the said Section 25(a) of Article 66½, as amended, does such section require the payment, by the Petitioner, under the facts and circumstances alleged in the foregoing Petition of a tax of 2% of the fair market value of the said public passenger motor vehicle as a condition precedent to the registration of and the issuance of a certificate of title for said vehicle, and (ii) that under the facts and matters alleged in the foregoing Petition, the said Section 25(a) cannot require the payment of a tax of 2% of the fair market value of the said public passenger motor vehicle as a condition precedent to the registration of and the issuance of a certificate of title for the said vehicle for the reason that Section 25(a), as amended, would thereby impose an unreasonable and unlawful burden on interstate commerce in violation of the Commerce Clause of the Federal Constitution.

Wherefore, the Petitioner alleges that the aforesaid refusal on the part of the Commissioner of Motor Vehicles is improper and unwarranted and the Petitioner respectfully prays that a Writ of Mandamus may be issued and directed to the said W. Lee Elgin, Commissioner of Motor Vehicles, commanding him (i) to accept your Petitioner's application for the issuance of a certificate of title for the said public passenger motor vehicle and retain the sum of One Dollar ($1.00), being the same sum heretofore tendered the said Commissioner of Motor Vehicles by the Petitioner in connection with the said application, and (ii) to issue to [fol. 16] the Petitioner a certificate of title for the aforesaid public passenger motor vehicle in accordance with the provisions of the Annotated Code of Maryland as aforesaid, without the payment of a tax of 2% of the fair market value of said vehicle as provided by Section 25(a) of Article 66½, as amended.

And your Petitioner will ever pray, etc.

Miles, Walsh, O'Brien & Morris, Attorneys for Petitioner.

ORDER

A Petition for a Writ of Mandamus having been filed in the above-entitled case, the Defendant having demurred thereto, briefs of counsel to the parties having been filed and argument heard thereon, an Opinion of Court having been filed, an Order of Court overruling the Defendant's Demurrer having been entered and an Answer of the Defendant admitting all of the allegations of fact in the Petition having been filed, it is, this 14th day of June, 1948, by the Superior Court of Baltimore City

Ordered

That a Writ of Mandamus directed to the Defendant, W. Lee Elgin, Commissioner of Motor Vehicles of the State of Maryland issue as prayed in the Petition, provided, however, that execution of this Order be stayed pending the final determination of an Appeal by the Defendant to the Court of Appeals of Maryland and, provided further, that the Defendant be excused from the necessity of filing an appeal bond.

Joseph Sherbow, Judge.

[fol. 17] IN SUPERIOR COURT OF BALTIMORE CITY

PETITION OF CAPITOL GREYHOUND LINES FOR WRIT OF MANDAMUS AND ORDER GRANTING SAME

The Petition of Capitol Greyhound Lines, a body corporate (hereinafter referred to as the "Petitioner"), by Miles, Walsh, O'Brien & Morris, its attorneys, respectfully represents:

1. That the Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Virginia and has duly qualified as a foreign corporation authorized to do business in the State of Maryland and that W. Lee Elgin is Commissioner of Motor Vehicles and, in such capacity, is the administrative head of the Department of Motor Vehicles of the State of Maryland.

2. That the Petitioner was incorporated for the purpose of engaging in the public transportation of passengers for hire by motor vehicle and is now so engaged and since

November 30, 1930 has, as a part of the conduct and operation of its business as a common carrier by motor vehicles, established, maintained and operated, in accordance with authority vested in it pursuant to a certain certificate of public convenience and necessity granted by the Interstate Commerce Commission (a Federal regulatory body with authority to regulate and control certain operations of the Petitioner) a passenger bus line operating daily between the City of Cincinnati in the State of Ohio and the City of Washington in the District of Columbia, a distance of approximately 496 miles; that as a part of the necessary route over which said last mentioned line is operated pursuant to said authority of the Interstate Commerce Commission, the Petitioner operates its passenger busses over approximately nine miles of State, State-Aid and improved County roads of Maryland, including operations over streets and highways of incorporated towns and cities located within the State of Maryland.

3. That for the period October 1, 1946 to September 30, 1947, the Petitioner transported 406,572 passengers [fol. 18] over the aforesaid route thereby producing total gross revenues of $704,450.00 and that, for the aforesaid period, 1,509 of said passengers travelling in interstate commerce originated from or were destined for points within the State of Maryland thereby producing $3,695.80 of the aforesaid revenue. That the Petitioner along the portion of said route within the State of Maryland also transported, pursuant to the authority vested in it by the Public Service Commission of Maryland, passengers travelling in intrastate commerce originating from and destined for points solely within the State of Maryland and that for the period October 1, 1946 to September 30, 1947 of the aforesaid 406,572 total number of passengers transported by the Petitioner, only 11 were carried from points in the State of Maryland to points also within the State of Maryland thereby producing a gross revenue of $3.25 as part of the Petitioner's total gross revenues as aforesaid.

4. That the Petitioner on or about July 18, 1947, purchased at a cost to it of Twenty-Five Thousand Two Hundred Fifty-Eight Dollars and Seventy Cents ($25,258.70), a public passenger motor vehicle described as a General Motors 1947 body type omnibus, Model PD-3751, having 6 cylinders and 43.3 horsepower and a seating capacity

of 37 passengers, which the Petitioner desires and proposes to operate over the aforementioned route from Cincinnati to Washington and which said vehicle is required in the economic and efficient operation of the public service rendered by the Petitioner as a motor carrier pursuant to the aforementioned authority vested in it by the Interstate Commerce Commission; that Petitioner has made application to the Public Service Commission of Maryland, pursuant to the laws of the State of Maryland, for a permit authorizing it to operate in interstate commerce the aforementioned vehicle over the roads and highways in the State of Maryland embraced within the route heretofore mentioned, and that the said Public Service Commission of Maryland [fol. 19] granted the Petitioner the permit so sought.

5. That on or about January 8, 1948, the Petitioner presented the aforesaid permit obtained from the Public Service Commission of Maryland to the Department of Motor Vehicles of the State of Maryland and at the same time made application in writing, on forms provided by the said Department, for the issuance of a certificate of title for the said public passenger motor vehicle, and tendered to the said Department the sum of One Dollar ($1.00), for issuance of a certificate of title, as provided in Section 24(e) of Article 66½ of the Annotated Code of Maryland, a prerequisite to the issuance of a registration certificate and distinguishing plates and markers, as provided in Section 218 of Article 81 of the Annotated Code of Maryland, as amended by Chapter 326 of the Acts of 1947, which said registration certificate and distinguishing plates and markers are required by Section 20 of Article 66½ before said public passenger motor vehicle may be operated over State, State-Aid, improved County roads, and streets and roads of incorporated towns and cities in the State of Maryland for the period for which said certificate of registration and said distinguishing plates and markers were sought by the Petitioner.

6. That the Department of Motor Vehicles, acting under the instructions of the said Commissioner of Motor Vehicles, refused to accept the Petitioner's application for a certificate of title and the amount tendered in payment therefor was returned to the Petitioner, the said Commissioner of Motor Vehicles thereby unlawfully refusing to issue to the Petitioner certificate of title for the said motor vehicle here-

inbefore referred to. That the Commissioner of Motor Vehicles alleged that the amount tendered was insufficient and that the Petitioner was required by Section 25(a) of Article 66½ of the Annotated Code of Maryland, as amended by Chapter 560 of the Acts of 1947 (to pay, in addition to the aforementioned sum tendered, an excise tax of 2% on the [fol. 20] fair market value of the said public passenger motor vehicle, which tax would amount to an additional sum of $505.17, said payment being demanded as a condition precedent to the issuance of a certificate of title for said vehicle and therefore to the issuance of a certificate of registration and distinguishing plates and markers, although the said Commissioner of Motor Vehicles admitted that the Petitioner had complied with all other requirements entitling it to a certificate of title.

7. That the Petitioner alleges and avers (i) that under no proper construction of the said Section 25(a) of Article 66½, as amended, does such section require the payment, by the Petitioner, under the facts and circumstances alleged in the foregoing Petition of a tax of 2% of the fair market value of the said public passenger motor vehicle as a condition precedent to the registration of and the issuance of a certificate of title for said vehicle, and (ii) that under the facts and matters alleged in the foregoing Petition, the said Section 25(a) cannot require the payment of a tax of 2% of the fair market value of the said public passenger motor vehicle as a condition precedent to the registration of and the issuance of a certificate of title for the said vehicle for the reason that Section 25(a), as amended, would thereby impose an unreasonable and unlawful burden on interstate commerce in violation of the Commerce Clause of the Federal Constitution.

Wherefore, the Petitioner alleges that the aforesaid refusal on the part of the Commissioner of Motor Vehicles is improper and unwarranted and the Petitioner respectfully prays that a Writ of Mandamus may be issued and directed to the said W. Lee Elgin, Commissioner of Motor Vehicles, commanding him (i) to accept your Petitioner's application for the issuance of a certificate of title for the said public passenger motor vehicle and retain the sum of One Dollar ($1.00), being the same sum heretofore tendered the said Commissioner of Motor Vehicles by the

Petitioner in connection with the said application, and (ii) [fols. 21-24] to issue to the Petitioner a certificate of title for the aforesaid public passenger motor vehicle in accordance with the provisions of the Annotated Code of Maryland as aforesaid, without the payment of a tax of 2% of the fair market value of said vehicle as provided by Section 25(a) of Article 66½, as amended.

And your Petitioner will ever pray, etc.

Miles, Walsh, O'Brien & Morris, Attorneys for Petitioner.

ORDER

A Petition for a Writ of Mandamus having been filed in the above-entitled case, the Defendant having demurred thereto, briefs of counsel to the parties having been filed and argument heard thereon, an Opinion of Court having been filed, an Order of Court overruling the Defendant's Demurrer having been entered and an Answer of the Defendant admitting all of the allegations of fact in the Petition having been filed, it is, this 14th day of June, 1948, by the Superior Court of Baltimore City

Ordered—

That a Writ of Mandamus directed to the Defendant, W. Lee Elgin, Commissioner of Motor Vehicles of the State of Maryland issue as prayed in the Petition, provided, however, that execution of this Order be stayed pending the final determination of an Appeal by the Defendant to the Court of Appeals of Maryland and, provided further, that the Defendant be excused from the necessity of filing an appeal bond.

Joseph Sherbow, Judge.

[fols. 25-26] IN THE SUPERIOR COURT OF BALTIMORE CITY

[Title omitted]

DEMURRER TO PETITION OF CAPITOL GREYHOUND LINES FOR WRIT OF MANDAMUS—Filed February 13, 1948

To the Honorable, the Judge of Said Court:

W. Lee Elgin, Commissioner of Motor Vehicles, State of Maryland, demurs to the Petition for Writ of Mandamus of the Capitol Greyhound Lines, a body corporate, and to each and every paragraph thereof, and for grounds for said demurrer says:

(1) That the Petition is bad in substance and insufficient in law.

(2) That the allegations of said Petition are insufficient to entitle the Petitioner to the relief which it seeks.

(3) That the allegations of said Petition are insufficient to entitle the Petitioner to any relief.

(4) And for other reasons to be assigned at the hearing on this demurrer.

And, as in duty bound, etc.

(Signed) Hall Hammond, Attorney General, J. Edgar Harvey, Asst. Attorney General, Richard W. Case, Asst. Attorney General, Attorneys for Defendant, 1901 O'Sullivan Building, Baltimore 2, Maryland.

Duly sworn to by W. Lee Elgin. Jurat omitted in printing.

[fols. 27-28] IN THE SUPERIOR COURT OF BALTIMORE CITY

[Title omitted]

DEMURRER TO PETITION OF PENNSYLVANIA GREYHOUND LINES, INC., FOR WRIT OF MANDAMUS—Filed February 13, 1948

To the Honorable, the Judge of Said Court:

W. Lee Elgin, Commissioner of Motor Vehicles, State of Maryland, demurs to the Petition for Writ of Mandamus of the Pennsylvania Greyhound Lines, Inc., a body

corporate, and to each and every paragraph thereof, and for grounds for said demurrer says:

(1) That the Petition is bad in substance and insufficient in law.

(2) That the allegations of said Petition are insufficient to entitle the Petitioner to the relief which it seeks.

(3) That the allegations of said Petition are insufficient to entitle the Petitioner to any relief.

(4) And for other reasons to be assigned at the hearing on this demurrer.

And, as in duty bound, etc.

(Signed) Hall Hammond, Attorney General, J. Edgar Harvey, Asst. Attorney General, Richard W. Case, Asst. Attorney General, Attorneys for Defendant, 1901 O'Sullivan Building, Baltimore 2, Maryland.

Duly sworn to by W. Lee Elgin. Jurat omitted in printing.

[fols. 29-41] IN THE SUPERIOR COURT OF BALTIMORE CITY

[Title omitted]

DEMURRER TO PETITION OF RED STAR MOTOR COACHES, INC., FOR WRIT OF MANDAMUS—Filed February 13, 1948

To the Honorable, the Judge of Said Court:

W. Lee Elgin, Commissioner of Motor Vehicles, State of Maryland, demurs to the Petition for Writ of Mandamus of the Red Star Motor Coaches, Inc., a body corporate, and to each and every paragraph thereof, and for grounds for said demurrer says:

(1) That the Petition is bad in substance and insufficient in law.

(2) That the allegations of said Petition are insufficient to entitle the Petitioner to the relief which it seeks.

(3) That the allegations of said Petition are insufficient to entitle the Petitioner to any relief.

(4) And for other reasons to be assigned at the hearing on this demurrer.

And, as in duty bound, etc.

(Signed) Hall Hammond, Attorney General, J. Edgar Harvey, Asst. Attorney General, Richard W. Case, Asst. Attorney General, Attorneys for Defendant, 1901 O'Sullivan Building, Baltimore 2, Maryland.

Duly sworn to by W. Lee Elgin. Jurat omitted in printing.

[fol. 42] IN THE COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1948

No. 81

W. LEE ELGIN, Commissioner of Motor Vehicles,

vs.

CAPITOL GREYHOUND LINES

W. LEE ELGIN, Commissioner of Motor Vehicles,

vs.

PENNSYLVANIA GREYHOUND LINES, INC.

W. LEE ELGIN, Commissioner of Motor Vehicles,

vs.

RED STAR MOTOR COACHES, INC.

Marbury, C. J., Delaplaine, Collins, Grason, Henderson, Markell, JJ.

OPINION BY COLLINS, J.—Filed February 10, 1949

To be reported.

[fol. 43] These are three appeals by W. Lee Elgin, Commissioner of Motor Vehicles of the State of Maryland, (the Commissioner), appellant, from orders of the Superior Court of Baltimore City overruling his demurrers to petitions for mandamus filed by Capitol Greyhound Lines, a

body corporate, (Capitol), Pennsylvania Greyhound Lines, Inc., a body corporate, (Greyhound), and Red Star Motor Coaches, Inc., a body corporate, (Red Star), appellees.

The petitions allege that the appellees are corporations engaged in the business of the public transportation of passengers for hire by motor vehicles. All of the appellees have operated pursuant to authority vested in them by the Interstate Commerce Commission. Appellee, Red Star, since 1938, has operated daily a passenger bus line between Rehoboth, Delaware, and Baltimore, a distance of approximately 120 miles, 64 miles of which are over state, state aid and improved county roads in Maryland. The particular operation is but part of an integrated bus system serving parts of Maryland, Delaware, and Pennsylvania. Appellee, Capital, since November 20,, 1930, has operated daily a passenger bus line between Cincinnati, Ohio, and Washington, D. C., a distance of approximately 496 miles, nine miles of which are over state, state aid and improved county roads of Maryland. Appellee, Greyhound, since April 25, 1930, has operated a passenger bus line between Philadelphia and Norfolk, a distance of approximately 245.3 miles. Grey-
[fol. 44] hound operates the portion of the road between Philadelphia and the Maryland-Virginia state line, a distance of approximately 172.6 miles, 41 miles of which are over state, state aid and improved county roads of Maryland, the said route being a part of a nation wide integrated bus system.

Appellee, Red Star, transported over the above designated route for the period from June 1, 1947 to November 1, 1947, a total of 13,910 passengers producing total gross revenues of $21,087.18. 5,035 passengers in interstate commerce originating from or destined to points within Maryland thereby produced revenues of $11,324.41 of the aforesaid total gross revenues. Over this route it transported 6,577 intrastate passengers producing gross revenues of $9,015.89.

Appellee, Capitol, transported over its above designated route from October 1, 1946 to September 30, 1947, a total of 406,572 passengers with total gross revenues of $704,450. Of this number 1,509 traveled in interstate commerce producing $3,695.80 of the aforesaid total gross revenues. Over this route it transported in intrastate commerce 11 such passengers producing gross revenues of $3.25.

Appellee, Greyhound, over the above designated route from October 1, 1946 to September 30, 1947, transported a total of 168,684 passengers producing total gross revenues of $436,326.92. All of these passengers traveled exclusively in interstate commerce. Greyhound has no authority from the Public Service Commission of Maryland or from any [fol. 45] other agency authorizing it to transport passengers in intrastate commerce in Maryland.

Each of the appellees purchased a public passenger motor vehicle during the year 1947 necessary for use over its respective aforementioned routes and each obtained from the Public Service Commission of Maryland a permit authorizing it to operate this motor vehicle in interstate commerce over the roads and highways of the State of Maryland embraced in each of its respective routes. Red Star purchased its vehicle on July 18, 1947, at a cost of $18,637.50. Capitol's vehicle was purchased on July 18, 1947, at a cost of $25,258.70. Greyhound's purchase was made on October 22, 1947, at a cost of $29,002.60.

Capitol and Greyhound on January 8, 1948, and Red Star on January 12, 1948, applied to the Department of Motor Vehicles for the issuance of a certificate of title for the public passenger vehicles purchased by them and each presented the permit obtained from the Public Service Commission of Maryland. Each application was made on forms provided by the Department of Motor Vehicles and each appellee tendered to that Department the sum of $1.00 with each application for the issuance of a certificate of title for each motor vehicle.

Appellees allege that by Article 81, Section 218, of the Annotated Code of Maryland, (1947 Supplement), Chapter 326 of the Acts of 1947, the issuance of a certificate of title [fol. 46] for a motor vehicle is a prerequisite to the issuance of a registration certificate and distinguishing plates and markers, and by Article 66½, Section 20 of the Annotated Code of Maryland, (1947 Supplement), a registration certificate and distinguishing plates and markers are required before any motor vehicle may be operated over the highways of the State of Maryland.

Those three applications for the issuance of a certificate of title were refused by the Commissioner and the sum tendered in payment was returned to the appellees. In each case the Commissioner alleged that the amount tendered was insufficient and that the applicants were required to pay

an excise tax of two percent on the fair market value of each public passenger motor vehicle as required by Section 25A of Article 66½ of the Annotated Code of Maryland, (1947 Supplement), Chapter 560, Section 25A of the Acts of 1947, as a condition precedent to the issuance of the certificate of title, the issuance of the certificate of registration and the distinguishing plates and markers, although the Commissioner admitted that the appellees had complied with all other requirements entitling them to a certificate of title. The appellees further allege that the amount of the additional tax demanded by the Commissioner from Red Star is $372.75, from Capitol $505.17, and from Greyhound $580. The appellees allege that the Commissioner cannot require the payment of this additional tax for the reason that Sec- [fol. 47] tion 25A of Article 66½, supra, would impose an unlawful burden on interstate commerce in violation of the commerce clause of the Federal Constitution. The appellees ask that a writ of mandamus be issued to the appellant commanding him to accept the $1.00 tendered and to issue to the appellees a certificate of title for the aforesaid public passenger vehicles without the payment of the said two percent tax.

After the overruling of demurrers filed by the appellant to each of these petitions, the trial judge issued an order that the writs of mandamus be issued. He further provided that the order in each case be stayed pending the final determination by this Court and further that the appellees be excused from filing an appeal bond. From those orders by the trial judge, the appellant appeals here.

For the purposes of this opinion, the following tabulation is offered by the appellees:

	Entire Route Travelled	Operation in Maryland	Amount of Tax
Red Star	120 Miles	64 Miles	$372.75
Capitol	496 Miles	9 Miles	505.17
Greyhound	172 Miles	41 Miles	580.00

Article 1, Section 8, Clause 2 of the Federal Constitution, hereinafter referred to as the "Commerce Clause", gives to the Congress of the United States the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

Section 25A of Article 66½, supra, provides in part: [fol. 48] "(Excise Tax for the Issuance of Certificates of

Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued. * * * (c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland 1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11(e) of said Article 89B."

The titling of Chapter 560 of the Acts of 1947, supra, states in part that the Act is "to provide for the financing, planning, constructing and maintaining of public roads in the State". The Act itself so provides. The trial judge [fol. 49] found that the proceeds were to be used for servicing the debt on State highway construction bonds and the balance, if any, went to the construction fund of the State Roads Commission and were to be specifically used for road purposes. The appellees do not dispute this. In fact they state in their brief: "The proceeds of the challenged tax are now expressly allocated to the construction and maintenance of public highways * * *." There is no dispute that the money from this tax is used specifically for road purposes.

The primary question before us is therefore whether this tax, used specifically for road purposes, although having no specific relationship to road use, is a violation of the commerce clause of the Federal Constitution. The appellees contend that this state tax imposed on interstate carriers for the privilege of using the roads of this State, unless purely nominal in amount, is valid only if not more than compensatory and the amount of the charge must necessarily be predicated upon the use made or the use to be made

of the roads of Maryland. In other words, they contend that the charge in dispute must bear some reasonable relationship to the privilege of using the Maryland highways and, if not, it is repugnant to the commerce clause of the Federal Constitution.

The appellant, on the other hand, contends that the tax here in question is a reasonable and nondiscriminatory tax imposed upon the privilege of using the roads of the State [fol. 50] of Maryland and is constitutional regardless of whether the tax bears any specific relationship to road use.

By Chapter 560 of the Acts of 1947, here in question, for the first time the tax was made to apply not only to the original issuance of the title certificate but also to any subsequent transfer of title. The new act also provided for the first time that the proceeds of the tax are to be used first for servicing the debt on the State highway construction bonds and the balance, if any, is to be paid to the construction fund of the State Roads Commission.

Where a tax on interstate motor carriers is allocated to state highway funds, it is an imposition on the privilege of using the state roads and is not a violation of the commerce clause if reasonable in amount and nondiscriminatory. Interstate Transit, Inc. vs. Lindsey, 283 U. S. 183, 186, 75 L. Ed 953, (1931); Morf vs. Bingaman, 298 U. S. 407, 412, 80 L. Ed. 1245, (1936); Ingles vs. Morf, 300 U. S. 290, 294, 81 L. Ed. 653, (1937); Aero Mayflower Transit Co. vs. Board of R. R. Commissioners, 332 U. S. 495, 505, 92 L. Ed. 153, (1947).

The question before us is therefore narrowed as to whether this tax imposed upon the privilege of using the State roads, having no specific relationship to road use, is reasonable and nondiscriminatory. The burden of the proof is on the taxpayer to show that the tax is unreasonable. Clark vs. Paul Gray, Inc., 306 U. S. 583, 83 L. Ed. 1001, (1939).

In Morf vs. Bingaman, supra, decided in 1936, the State [fol. 51] of New Mexico by a statute denied to all persons the use of the highways of the State for the transportation of any motor vehicle on its own wheels, for the purpose of selling it or offering it for sale without a special permit. For this permit the statute levied a fee of $7.50 if the vehicle was transported by its own power and $5.00 if it was towed or drawn by another vehicle. The appellant, a resident and citizen of California, purchased new and used

automobiles in other states and transported them, on their own wheels, over state highways to California, where he offered them for sale. He usually transported such cars over the highways of New Mexico for a distance of about 165 miles in processions, or caravans. The Supreme Court of the United States said in that case at page 412: "As the tax is not on the use of the highways but on the privilege of using them, without specific limitation as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than a fee based on mileage, is not a forbidden burden on interstate commerce. See Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, and Aero Mayflower Transit Co. v. Georgia Pub. Serv. Commission, 295 U. S. 285, 79 L. Ed. 1431, 55 S. Ct. 709, supra." It was further said at page 413: "There is nothing in the Fourteenth Amendment which requires classification for taxation to follow any particular form of words."

In the case of Dixie Ohio Express Company vs. State [fol. 52] Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, decided January 30, 1939, the appellant was an Ohio corporation engaged exclusively in interstate transportation as a common carrier of property for hire by motor vehicle including hauling between points in Georgia and points in other states. The State of Georgia imposed a maintenance tax on trucks and trailers used on State roads measured by the rated capacity or factory weight of the vehicle. This tax was from $50.00 to $75.00 annually. The Supreme Court of the United States said that consistently with the commerce clause of the Constitution a state could impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax as compensation for the privilege of using its highways for that purpose. The Court in that case held that the language of the statute disclosed the intention of the State to require payment of compensation for the privilege of operating over its roads the specified vehicles for the transportation of property. It further held that this tax contained no hint of hostility to interstate commerce or a purpose to impose a charge on the privilege or business of interstate transportation. The Court further pointed out that the appellant would not claim that the privilege to operate for a year one hundred pieces of its equipment over any or all of the State roads of Georgia was not worth $6,000.00, the amount of the taxes in controversy. [fol. 53] The Court pointed out that the amounts paid for

license tags, public service tags and taxes on gasoline were without significance in the case.

In the case of Aero Mayflower Transit Co. vs. Board of Railroad Commissioners, supra, decided December 8, 1947, the State of Montana imposed a flat tax of $10.00 annually upon each vehicle operated by a motor carrier over the highways of that State and a fee of one-half of one percent of the carriers gross operating revenue from its operations in Montana with an annual minimum of $15.00 per vehicle in consideration of the use of the highways and in addition to all other motor vehicle license fees and taxes. The Supreme Court of the United States in that case pointed out that the two flat taxes, one for $10.00 and the other for $15.00, payable annually upon each vehicle operated on Montana highways were declared to be in addition to all others and to be imposed "in consideration of the use of the highways of this State". The Court further said: "It is far too late to question that a state, consistently with the commerce clause, may lay upon motor vehicles engaged exclusively in interstate commerce, or upon those who own and so operate them, a fair and reasonable, nondiscrimi- [fol. 54] natory tax as compensation for the use of its highways. * * * And the aggregate amount of the two taxes taken together is less than the amount of similar taxes this Court has heretofore sustained. Cf. Dixie Ohio Exp. Co. v. State Revenue Commission, 306 U. S. 72, 73 L. ed 495, 59 S. Ct. 435, supra; Aero Mayflower Transit Co. v. Georgia Pub. Serv. Commission, 295 U. S. 285, 78 L. ed 1439, 55 S. Ct. 709, supra." The Court further said: "The exactions in the present case fall clearly within the rule of Morf v. Bingaman and its predecessors in authority, and therefore, like that case, outside the decisions in the Interstate Transit and like cases. Both taxes are levied 'in consideration of the use of the highways of this state,' that is, as compensation for their use, and bear only on the privilege of using them, not on the privilege of doing the interstate business. Moreover, the flat $10 fee laid by § 3847.16 (a) is further identified as one on the privilege of use by the fact that 'unlike the general tax in Interstate Transit v. Lindsey, 283 U. S. 183, 75 L. ed. 953, 51 S. Ct. 380, the levy of which was unrelated to the use of the highways, grant of the privilege of their use is by the present statute made conditional upon payment of the fee:' " In holding that the flat minimum of $15 annually was not unreasonable, the Court fur-

ther said: "And appellant has advanced no tenable basis in rebuttal of the legislative declaration that this tax too is exacted in consideration of the use of the state's high- [fol. 55] ways, i.e., for the privilege of using them, not for that of doing the interstate business. Here, as in Morf v. Bingaman, 'there is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways,' with enhanced wear, tear and hazards laying heavier burdens on the state for maintenance and policing than other types of traffic create. 298 U. S. 407, 411, 80 L. ed 1245, 1249, 56 S. Ct. 756. It is to compensate for these burdens that the taxes are imposed, and appellant has not sustained its burden, Clark v. Paul Gray, Inc. supra (306 U. S. at 599, 83 L. ed 1013, 59 S. Ct. 744), and authorities cited, of showing that the levies have no reasonable relation to that end. It is of no consequence that the state has seen fit to lay two exactions, substantially identical, rather than combine them into one, or that appellant pays other taxes which in fact are devoted to highway maintenance. For the state does not exceed its constitutional powers by imposing more than one form of tax. Interstate Busses Corp. v. Blodgett, 276 U. S. 249, 72 L. ed 551, 48 S. Ct. 230, supra; Dixie Ohio Exp. Co. v. State Revenue Commission, 306 U. S. 72, 83 L. ed. 495, 59 S. Ct. 435, supra. *And, as we have said the aggregate amount of both taxes combined is less than that of taxes heretofore sustained.* In view of these facts there is not even semblance of substance to appellant's contention that the taxes are excessive." (Italics supplied here.)

[fol. 56] The largest tax before us here is in the amount of $580. Considering the life of the vehicles in this case, it is reasonable to suppose that such a vehicle will be in operation for at least five years. Assuming that five years is the standard life of the vehicle, the tax would be $116.00 a year. In view of the three late decisions of the Supreme Court of the United States just reviewed, Morf vs. Bingaman, supra; Dixie Ohio Express Co. vs. State Rev. Com., supra; Aero Mayflower Transit Co. vs. Board of R. R. Com., supra, we cannot say that the tax here in question must have a specific relationship to road use. When the Supreme Court of the United States said in the case of Dixie Ohio Express Co. vs. State Rev. Com., supra, that a yearly tax of from $50 to $75 on equipment not worth $6,000 is not discriminatory or unreasonable, we cannot say that a tax of $116.00 a year on a

vehicle whose value is $29,000 is unreasonable or discriminatory. The amount of the tax here appears to be less than other taxes heretofore sustained by the Supreme Court of the United States. Aero Mayflower Transit Co. vs. Board of Railroad Commissioners, supra.

In this case no argument, or analysis of statistics in the petitions, has been presented on the question whether the tax, as applied to any particular one of the three cases before us is unreasonable or discriminatory. At the argument in this Court both parties were asked specifically whether the ruling of this Court might be different in one of the cases before us than in another. Neither party made any distinc- [fol. 57] tion in this respect. We were informed by the appellees that this was an "industry suit". In the circumstances it does not seem necessary or advisable for us to engage in statistical studies on a possible factual question which has not been raised.

Appellees further contend that the provisions of Section 218 of Article 81 and of Section 293 of Article 56 of the Annotated Code of Maryland render the imposition of the titling tax upon the appellees and others similarly situated invalid.

As Section 293 of Article 56 relates to intrastate carriers, we cannot see how that Section has any bearing on the case before us, except to show that the two sections mentioned do not discriminate against interstate commerce.

Section 218 of Article 81 was first enacted as Chapter 593, Section 199 of the Acts of 1933, and is commonly known as the "seat-mile tax". This Section requires each owner of a motor vehicle to be used in interstate transportation of passengers for hire to pay a tax based on the number of passenger seats in the vehicle. It provided in part: "and no other additional fees, licenses or tax, shall be charged by the State or any County or municipal sub-division of the State except the property tax and gasoline tax on gasoline purchased in Maryland in respect to such vehicles or their operation." The only amendment to that Act is by Chapter 326, of the Acts of 1947, when the only change made was a reduction in the amount of that tax. The aforesaid quoted provision providing that "no other additional fees, licenses or tax, shall be charged" has remained in the Act since 1933 and remains in the Act as re-enacted by Chapter 326, of the Acts of 1947.

[fol. 58] Appellees contend that Code, Article 66½, Section 25A Chapter 560, Section 25A of the Acts of 1947, here in question, and Code, Article 81, Section 218, Chapter 326, of the Acts of 1947, supra, cannot both be applied to the same vehicles and the Legislature never intended that Chapter 560, supra, be applicable to carriers subject to the provisions of Chapter 326, supra, and, as Chapter 326 provides that no other tax shall be levied, Chapter 560, supra, is not applicable to the appellees. Both Chapter 326 and Chapter 560 of the Acts of 1947 were approved by the Governor on April 16, 1947. The appellees say that as Chapter 326 was passed as an emergency measure, and hence became effective on the date of executive approval, (April 16, 1947), and Chapter 560 was not enacted as an emergency measure and hence did not become effective until June 1, 1947, the latter Act, Chapter 560, may be said to be the more recent law of the two acts. They contend that these two Acts patently "contain inconsistent and contradictory provisions, if Chapter 560 is to be construed as applying to carriers subject to the provisions of Chapter 326." The appellees further contend that there is nothing in the language of Chapter 560 which repeals the provisions of Chapter 326 and that a repeal by implication is not favored. Buchholtz vs. Hill, 178 Md. 280, 288; Pressman vs. Elgin, — Md. —, 50 A. 2d 560.

As pointed out by the appellees, where two or more acts of the Legislature are approved by the Governor on the same day, the later act in numerical order of chapters is [fol. 59] considered the last expression of the legislative will. State vs. Davis, 70 Md. 237, 240; Musgrove vs. B. & O. R. R. Co., 111 Md. 629. We agree that as between Chapter 326 and Chapter 560, of the Acts of 1947, the latter is the more recent.

If there is any inconsistency between these two acts, Chapter 326 must yield to Chapter 560. This Court has stated on many occasions that the act passed last must prevail. Davis vs. State, 7 Md. 151, 159; Albert vs. White, 33 Md. 297, 305; Appeal Tax Court vs. Western Md. R. R. Co., 50 Md. 274, 296; Yunger vs. State, 78 Md. 574, 577; Musgrove vs. B. & O. R. R. Co., supra; Beall vs. Southern Md. Agri. Ass'n., 136 Md. 305, 312. The appellees here admit that Chapter 560 is the more recent law of the two acts. We must therefore hold to the extent of the conflict between Chapter 326 and Chapter 560, that Chapter 560 prevails and the prohibition of Chap-

ter 326, of the Acts of 1947, cannot apply to the taxes imposed by Chapter 560, of the Acts of 1947.

Appellees further contend that the titling tax, Article 66½, Section 25A, (1947 Supplement of the Code), supra, here in question, has never been applied to interstate vehicles until after the amendment by Chapter 560, of the Acts of 1947, and therefore the construction placed upon that tax by administrative interpretation has obtained the force of law. Popham vs. Conservation Commission, 186 Md. 62, 71; Bouse vs. Hutzler, 180 Md. 682, 687; Atkinson vs. Sapperstein, — [fol. 60] Md. —, 60 A. 2d 737, 740. We must note, however, that in the past the tax here in question has been applied at various times to the "State Emergency Relief Fund" and to the "State Fund for Aid to the Needy" and for the first time by Chapter 560, of the Acts of 1947, the proceeds of this tax have been applied specifically to road purposes. Evidently it was thought that because the tax, here in question, was not applied specifically to road purposes it could not be levied on interstate commerce and for that reason was not levied on the appellees, but now that the tax is specially applied to road purposes, it can be applied to the appellees. This explains the former administrative interpretation.

For the reasons herein given, we are of opinion that the demurrers to the petitions should have been sustained and the petitions of the appellees dismissed.

Orders reversed, with costs, and petitions dismissed.

[fol. 61] IN THE COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1948

No. 81

W. LEE ELGIN, Commissioner of Motor Vehicles,

vs.

CAPITOL GREYHOUND LINES

W. LEE ELGIN, Commissioner of Motor Vehicles,

vs.

PENNSYLVANIA GREYHOUND LINES, INC.

W. LEE ELGIN, Commissioner of Motor Vehicles,

vs.

RED STAR MOTOR COACHES, INC.

DECREE—February 17, 1949

This appeal in this case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon this seventeenth day of February, 1949, by the Court of Appeals of Maryland, and by the authority thereof adjudged and ordered that the orders of the Superior Court of Baltimore City, dated the 14th day of June, 1948, be and the same are hereby reversed with costs, and petitions dismissed.

Ogle Marbury, Chief Judge for the Court.

Filed: Feb. 17, 1949.

[fols. 62-70] IN THE COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1948

No. 81

W. LEE ELGIN, Comm. of Motor Vehicles,

vs.

PENNA. GREYHOUND LINES, INC., etc.; RED STAR MOTOR COACHES, INC., etc.; CAPITOL GREYHOUND LINES, etc.

3 appeals in one record from the Superior Court of Baltimore City.

Filed: Aug. 30, 1948.

Feb. 10, 1949, Orders reversed, with costs, and petitions dismissed.

Opinion filed, Op. Collins, J.

Feb. 17, 1949, Decree filed.

MANDATE

Appellant's Cost in the Court of Appeals of Maryland,

Clerk's Cost	$ 10.00	
Brief	$264.00	
Appearance Fee	$ 10.00	$284.00

Appellee's Cost in the Court of Appeals of Maryland,

Brief	$182.26		
Appearance Fee	$ 10.00	192.26	$476.26

STATE OF MARYLAND, Set:

I, Maurice Ogle, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this twelfth day of March, A. D. 1949.

Maurice Ogle, Clerk of the Court of Appeals of Maryland. (Seal.)

Costs shown on this Mandate are to be settled between counsel and *not through this office.*

[fol. 71] IN THE COURT OF APPEALS OF MARYLAND

[Title omitted]

ORDER ALLOWING APPEAL—May 5, 1949

The petition of Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., the Appellees in the above entitled action, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Court of Appeals of Maryland, having been filed with the Clerk of this Court, and presented herein, accompanied by assignment of errors, and a statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States;

[fol. 72] It is hereby ordered this day of May, 1949, that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated March 12, 1949, of the Court of Appeals of Maryland, as prayed in said petition, and that the Clerk of the Court of Appeals of Maryland shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of said court, a true copy of the material parts of the record herein, which shall be designated as a praecipe or stipulation of the parties, or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that the said Appellants shall give a good and sufficient bond in the sum of two hundred dollars that the said Appellants shall prosecute said appeal to effect and answer all costs if they fail to make their plan good.

Ogle Marbury, C. J.

Filed: May 5, 1949. Maurice Ogle, Clerk.

[fol. 73] IN THE COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS—May 5, 1949

The Appellants, Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., in accordance with Rule 9 of the Rules of the Supreme Court of the United States, and as a supplement to their Petition of Appeal filed herewith, make the following assignment of errors, which they aver occurred on the hearing hereof and upon which they rely to reverse the judgment herein as appears of record.

[fol. 74] The Appellants assign as errors:

1. That the Court of Appeals of Maryland erred in holding that Section 25A of Article 66½ of the Annotated Code of Maryland, imposing a tax of 2% upon the fair market value of motor vehicles used in interstate commerce as a condition precedent to the issuance of certificates of title thereto, the issuance of such certificates being a further condition precedent to the registration and operation of such vehicles in the State of Maryland, was not in contravention of Article I, Section 8, Clause 3, of the Federal Constitution.

2. That the Court of Appeals of Maryland erred in holding that the State of Maryland is not prohibited by Article I, Section 8, Clause 3, of the Federal Constitution from imposing a tax upon Appellants based upon the fair market value of vehicles used in interstate commerce, as a condition precedent to permitting Appellants to engage in interstate commerce over the public highways of Maryland.

3. That the Court of Appeals of Maryland erred in holding that the State of Maryland is not prohibited by Article I, Section 8, Clause 3, of the Federal Constitution from imposing upon Appellants, as public carriers of passengers for hire by motor vehicle in interstate commerce over the public highways of Maryland, a tax of 2% of the fair market value of each motor vehicle as a condition precedent to such use without regard to the relationship between the use of roads made by such vehicles and the amount of the tax.

Wherefore, the Appellants, Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor

Coaches, Inc., pray that the judgment of the Court of Appeals of Maryland be reversed and that Section 25A, Article 66½ of the Annotated Code of Maryland, be declared unconstitutional and invalid as here applied because of its [fols. 75-125] repugnancy to Article I, Section 8, Clause 3 of the Federal Constitution.

Clarence W. Miles, Baltimore, Maryland; Benjamin C. Howard, Baltimore, Maryland; Miles, Walsh, O'Brien & Morris, Baltimore, Maryland, Attorneys for Appellants.

Filed: May 5, 1949. Maurice Ogle, Clerk.

[fol. 126] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION OF THE CASE—Filed June 28, 1949

The Appellants, Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc. and Red Star Motor Coaches, Inc., hereby designate as the parts of the record necessary for the consideration of the case, the following:

1. The Petitions for Writs of Mandamus filed by each of the Appellants in the Superior Court of Baltimore City.

2. The Demurrers to Petitions for Writs of Mandamus.

3. The Orders of the Superior Court of Baltimore City directing that Writs of Mandamus be issued.

4. The Opinion of the Superior Court of Baltimore City.

[fol. 127] 5. The Opinion of the Court of Appeals of Maryland.

6. The Decree of the Court of Appeals of Maryland.

7. The Mandate of the Court of Appeals of Maryland.

Clarence W. Miles, Baltimore, Maryland; Benjamin C. Howard, Baltimore, Maryland; Miles, Walsh, O'Brien & Morris, Baltimore, Maryland, Attorneys for Appellants.

Service of copy acknowledged this 28th day of June, 1949.

Hall Hammond, Attorney General of Maryland.

[fol. 128] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY—Filed June 28, 1949

The Appellants, Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc. and Red Star Motor Coaches, Inc., state that the point upon which they intend to rely is as follows:

That the requirement, as a condition precedent to the operation of motor vehicles in the State of Maryland, of the payment of a tax of two per centum of the market value of such vehicles imposed by Section 25A, Article 66½ of the Annotated Code of Maryland is unconstitutional as applied to vehicles engaged in the interstate [fol. 129] transportation of passengers for hire for the reason that it is an unreasonable and unlawful burden upon interstate commerce, and in contravention of Article 1, Section 8, Clause 3 of the Federal Constitution.

Clarence W. Miles, Baltimore, Maryland; Benjamin C. Howard, Baltimore, Maryland; Miles, Walsh, O'Brien & Morris, Baltimore, Maryland, Attorneys for Appellants.

Service of copy acknowledged this 28th day of June, 1949.

Hall Hammond, Attorney General of Maryland.

[fol. 130] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 118

CAPITOL GREYHOUND LINES, et al., Appellants,

vs.

ARTHUR H. BRICE, Commissioner of Motor Vehicles, State of Maryland

ORDER NOTING PROBABLE JURISDICTION—October 17, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

October 17, 1949.

Endorsed on Cover: File No. 53,865. Maryland Court of Appeals. Term No. 118. Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., Appellants, vs. Arthur H. Brice, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland. Filed June 13, 1949. Term No. 118 O. T. 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 118

118

CAPITOL GREYHOUND LINES, PENNSYLVANIA GREYHOUND LINES, INC., AND RED STAR MOTOR COACHES, INC.,
Appellants,

vs.

ARTHUR H. BRICE, COMMISSIONER OF MOTOR VEHICLES, STATE OF MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

STATEMENT AS TO JURISDICTION

CLARENCE M. MILES,
BENJAMIN C. HOWARD,
Counsel for Appellants.

MILES, WALSH, O'BRIEN & MORRIS,
Of Counsel.

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IN THE COURT OF APPEALS OF MARYLAND

W. LEE ELGIN, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland,

Appellant,

v.

CAPITOL GREYHOUND LINES, a Body Corporate, Cincinnati, Ohio,

Appellee

W. LEE ELGIN, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland,

Appellant,

v.

PENNSYLVANIA GREYHOUND LINES, INC., a Body Corporate, Cleveland, Ohio,

Appellee

W. LEE ELGIN, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland,

Appellant,

v.

RED STAR MOTOR COACHES, INC., a Body Corporate, Salisbury, Maryland,

Appellee

STATEMENT AS TO JURISDICTION UNDER RULE 12

The Petitioners and Appellees in the above entitled action, Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., concurrently with their Petition for Appeal and Assignment of Errors,

present herewith their statement in support of their contention that the Supreme Court of the United States has jurisdiction on this appeal to hear this cause and to reverse the final judgment and decree of the Court of Appeals of Maryland, dated March 12, 1949.

A. The Statutory Provisions Believed to Sustain the Jurisdiction

This appeal is entered by virtue of Title 28, Section 1257(2) of the United States Code, which provides for an appeal where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

On January 22, 1948, Petitioners filed in the Superior Court of Baltimore City petitions for Writs of Mandamus to compel the Commissioner of Motor Vehicles of Maryland to issue certificates of title for their motor vehicles without the payment of the tax of 2% of the fair market value of each of the vehicles as provided by Section 25A, Article 66½ of the Annotated Code of Maryland. That Court issued the Writs as prayed, whereupon the Commissioner of Motor Vehicles entered an appeal to the Court of Appeals of Maryland on June 30, 1948. The specific question decided by the Court of Appeals in its opinion (Appendix A), in which it reversed the orders of the lower Court and dismissed the petitions, was that Section 25A, Article 66½, as applied to vehicles used in interstate commerce, is not repugnant to the Commerce Clause of the Federal Constitution as being an unreasonable and unlawful burden on interstate commerce. In reversing, the Court of Appeals of Maryland upheld the validity of that statute. That Court is the highest court in the State in which a decision can be had. It is respectfully submitted, therefore, that jurisdiction of the Supreme Court of the United States attaches in

this cause under Title 28, Section 1257(2) of the United States Code.

B. The Statute of the State the Validity of which is Involved

The statutory provision which the Appellants contest is Section 25A, Article 66½, Annotated Code of Maryland (1947 Cumulative Supplement), starting on page 1123 and continuing to page 1124. This Section is set forth in full below:

> "25A. (Excise Tax for the Issuance of Certificates of Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued.
>
> "(b) The Department of Motor Vehicles shall require every applicant to supply information as it may deem necessary as to the time of purchase, the purchase price and other information relative to the determination of the fair market value.
>
> "(c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland (1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11(e) of said Article 89B.

"(d) Certificates of title for all motor vehicles owned by the State of Maryland or any political subdivision of the State and for fire engines and other fire department emergency apparatus, including ambulance operated by or in connection with any fire department, shall be exempt from the tax imposed by this Section."

C. The Date of the Judgment and Decree Sought to be Reviewed and the Date Upon Which the Application for Appeal is Presented

The Order of the Court of Appeals of Maryland, from which this appeal is taken, was filed on February 10, 1949, with a unanimous opinion, heretofore referred to and hereto appended marked Appendix A.

The Petition for Appeal herein was filed on May 5th, 1949, and was allowed May 5th, 1949.

The adjudication by the Court of Appeals of Maryland was final in its nature on February 10, 1949, since, by its reversal of the orders of the lower Court, it denied the petitions for Writs of Mandamus and Petitioners cannot operate as carriers of passengers for hire by motor vehicle in interstate commerce over the public highways of Maryland, without submitting to the payment of the tax involved.

D. Statement Showing that the Nature of the Case and of the Rulings of the Court was such as to bring the Case within the Jurisdictional Provisions Relied Upon

The Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., are all corporations engaged in the transportation of passengers by motor vehicle in interstate commerce. This is a matter of record. (Appendix A, Page 15.) Capitol and Red Star also operate in intrastate commerce within the State of Maryland. (Appendix A, Page 16.) No question has been raised in regard to the power of the State of Maryland to regulate,

control, or tax the operations of Capitol and Red Star as they may relate to their intrastate activity. It is admitted that each of the carriers has complied with all other requirements for the issuance of certificates of title to their motor buses, except for the payment of the tax in question (Appendix A, Page 18.) Thus, the principal question decided in the lower court and in the Court of Appeals of Maryland, as well as that to be determined by this Honorable Court, is "whether this tax, used specifically for road purposes, although having no specific relationship to road use, is a violation of the commerce clause of the Federal Constitution" (Appendix A, page 19).

In 1935, by Chapter 539 of the Acts of 1935, the titling tax was first imposed, at that time in the amount of 1%. The proceeds were to be paid into the "State Emergency Relief Fund". In 1936, it was provided that the proceeds should be paid into the "State Fund for Aid to the Needy". In 1939, by Section 74 of Chapter 277 of the Acts of that year, the impost was raised from 1% to 2% and the proceeds were to be paid into the general funds of the State. Until the change in the Act by Chapter 560 of the Acts of 1947, providing that the funds were to be used first, for servicing the debt on State Highway Construction Bonds and the balance to the Construction Fund of the State Roads Commission, the tax had never been enforced with respect to vehicles used in interstate commerce. It is only now, since the proceeds of the tax have been directed to highway construction purposes, that the State of Maryland seeks to impose this tax, unrelated as it is to highway use, and howsoever inequitably and unreasonably its burden falls upon interstate carriers operating within the State of Maryland.

This constitutional question was first raised in the Superior Court of Baltimore City by each of the carriers, in their petitions for Writs of Mandamus, and was specifi-

cally decided by the Superior Court of Baltimore City in its opinion granting the Writs. That court set forth as the first question to be answered "1. Does the 2% titling tax violate the commerce clause of the Federal Constitution as applied to interstate carriers?" (Appendix B, Page 27.) The court, in holding that the tax was a burden upon interstate commerce, said "Such a tax, aside from being discriminatory and bearing no relation to highway use, is a burden on interstate commerce." (Appendix B, Page 34.) The Commissioner in his appeal to the Court of Appeals of Maryland, contended "that the tax here in question is a reasonable and nondiscriminatory tax imposed upon the privilege of using the roads of the State of Maryland and is constitutional regardless of whether the tax bears any specific relationship to road use." (Appendix A, Page 20.) The Court of Appeals recognized that the validity of this contention was the constitutional issue to be decided. (Appendix A, Page 19.) The validity of the tax was upheld by the Court of Appeals on the ground, *inter alia*, that the tax was not unreasonable or discriminatory, and therefore not an unlawful burden on interstate commerce. (Appendix A, Pages 19 to 24.)

E. Statement of the Grounds Upon Which it is Contended that the Questions Involved are Substantial

Your Petitioners, in their Assignment of Errors, have assigned three items of error as having been committed by the Court of Appeals of Maryland in reversing the orders of the Superior Court of Baltimore City, and thereby sustaining the constitutionality of Section 25A, Article 66½ of the Annotated Code of Maryland. Essentially, however, there is but one basic question presented to the Supreme Court of the United States on this Appeal:

> Is Section 25A, Article 66½ of the Annotated Code of Maryland, providing for a tax of 2% on the fair

market value of a vehicle used in interstate commerce, a discriminatory and unreasonable burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Federal Constitution?

It is contended that this basic question is substantial, of a highly debatable nature, and is of such a character as to affect interstate carriers operating not only in Maryland but throughout the United States. It is further contended that this specific question has not been decided by the Supreme Court of the United States, and is not foreclosed by principals set forth in existing decisions dealing with the right of a State to impose upon motor vehicles engaged in interstate commerce a charge without relation to the use of the roads of the State.

There is no dispute whatever as to the facts. Red Star since the year 1938 has, pursuant to authority vested in it by the Interstate Commerce Commission, operated daily a passenger bus line between Rehobeth, Delaware, and Baltimore, Maryland, a distance of approximately 120 miles, 64 miles of which are over State, State-aid and improved county roads of Maryland. The particular operation is but part of an integrated bus system serving substantial parts of the States of Maryland, Delaware and Pennsylvania.

Capitol, since November 30, 1930, has, pursuant to the authority vested in it by the Interstate Commerce Commission, operated daily a passenger bus line between Cincinnati, Ohio, and Washington, D. C., a distance of approximately 496 miles, 9 miles of which are over State, State-aid and improved county roads of Maryland. Capitol operates over the said route as part of an integrated bus system serving several States.

Greyhound, since April 25, 1930, has, pursuant to authority vested in it and its wholly owned subsidiary (Pennsylvania Greyhound Lines of Virginia, Incorporated), by

the Interstate Commerce Commission, operated daily a passenger bus line between Philadelphia, Pennsylvania and Norfolk, Virginia, a distance of approximately 245.3 miles. Greyhound operates the portion of the route between Philadelphia, Pennsylvania, and the Maryland-Virginia State line, a distance of approximately 172.6 miles, 41 miles of which are over State, State-aid and improved county roads of Maryland. Greyhound operates over the said route as part of a nation-wide integrated bus system. Each of the two latter corporations is duly qualified to do business in the State of Maryland, and all three of the Petitioners are corporations engaged in the business of the public transportation of passengers for hire by motor vehicle.

Over its above designated route, Red Star transported for the period from June 1, 1947, to November 1, 1947, a total of 13,910 passengers, thereby producing total gross revenues of $21,087.18. A total of 5,035 of such passengers traveled in *interstate* commerce, originating from or destined for points within the State of Maryland, thereby producing $11,324.41 of the aforesaid total gross revenues. Over its said route, Red Star also transported, pursuant to authority vested in it by the Public Service Commission of Maryland, passengers traveling in *intrastate* commerce, originating from and destined for points solely within the State of Maryland, and, for the aforesaid period, it ansported 6,577 of such intrastate passengers thereby producing gross revenues of $9,015.89 or approximately 42% of the aforesaid total gross revenues derived from the particular operation.

Capitol, over its above described route, transported, for the period from October 1, 1946 to September 30, 1947, a total of 406,572 passengers thereby producing total gross revenues of $704,450.00. A total of 1,509 of these passengers traveled in *interstate* commerce, originating from or

destined for points within the State of Maryland thereby producing $3,695.80 of the aforesaid total gross revenues. Over its said route, Capitol also transported, pursuant to authority vested in it by the Public Service Commission of Maryland, passengers traveling in *intrastate* commerce, originating from and destined for points solely within the State of Maryland and for the aforesaid period it transported eleven of such passengers thereby producing gross revenues of $3.25 or an infinitesimal fraction of 1% of the aforesaid total gross revenues derived from the particular operation.

Greyhound, and its said wholly owned subsidiary, over its before-described route, transported for the period from October 1, 1946, to September 30, 1947, an estimated total of 168,684 passengers thereby producing total gross revenues of $436,326.92. All of these passengers traveled *exclusively in interstate commerce* from (a) points in the State of Maryland to points located out of the State of Maryland and (b) points out of the State of Maryland to points in the State of Maryland and (c) points out of the State of Maryland to other points out of the State of Maryland via roads or highways in the State of Maryland. Greyhound possesses no authority from the Public Service Commission or any other regulatory agency authorizing it to transport passengers in *intrastate* commerce within the State of Maryland, and during the aforesaid period Greyhound transported no passengers in intrastate commerce within the State of Maryland.

Red Star, Capitol and Greyhound each purchased a public passenger motor vehicle during the year 1947 necessary for use over its respective aforementioned route and obtained from the Public Service Commission of Maryland a permit authorizing it to operate its motor vehicle in interstate commerce over the roads and highways in the State of Maryland embraced in its respective route. The

vehicle purchased by Red Star was purchased on July 18, 1947 at a cost of $18,637.50, the vehicle purchased by Capitol was purchased on July 18, 1947, at a cost of $25,258.70 and that of Greyhound was purchased on October 22, 1947, at a cost of $29,002.60.

On January 8, 1948, Capitol and Greyhound applied to the Department of Motor Vehicles for the issuance of a certificate of title for the public passenger motor vehicles purchased by each of them and presented the required certificate of mileage proposed to be operated in Maryland issued by the Public Service Commission of Maryland. On January 12, 1948, Red Star made a similar application with respect to the vehicle purchased by it and presented a similar certificate of mileage issued by the Public Service Commission to it. Each of these applications was made on forms provided by the Department of Motor Vehicles and tender was made to the Department of the sum of $1.00 with each application for the issuance of a certificate of title for each vehicle. By Section 218 of Article 81 of the Annotated Code of Maryland, as amended by Chapter 326 of the Acts of 1947, the issuance of a certificate of title for a motor vehicle is a prerequisite to the issuance of a registration certificate and distinguishing plates and markers. By Section 20 of Article 66½ of the Annotated Code of Maryland (1943 Supp.) a registration certificate and distinguishing plates and markers are required before any motor vehicle may be operated over State, State-aid, improved county roads, and streets and roads of incorporated towns and cities in the State of Maryland.

With respect to each of the three applications for the issuance of a certificate of title, the action of the Department of Motor Vehicles, acting under the instructions of the Commissioner of Motor Vehicles, was the same in that the application was refused and the sum tendered in payment was returned to the particular applicant. In each instance,

the Commissioner of Motor Vehicles alleged that the amount tendered was insufficient and that the applicant was required to pay an excise tax of 2% on the fair market value of the vehicle for which a certificate of title was sought as a condition precedent to the issuance of the certificate of title and, therefore, to the issuance of a certificate of registration and distinguishing plates and markers. The said excise tax is imposed by Section 25A of Article 66½ of the Annotated Code of Maryland (1947 Supp.). This tax would amount to $372.75 in the case of Red Star, $505.17 in the case of Capitol and $580.00 in the case of Greyhound.

The inequalities of the application of the tax are best shown by a comparison of each company's operation in Maryland with the entire route traveled and the amount of tax sought to be charged against each of the Appellees as shown by the following table:

	Entire Route Traveled	Operation in Maryland	Amount of Tax
Red Star	120 Miles	64 Miles	$372.75
Capitol	496 Miles	9 Miles	505.17
Greyhound	172 Miles	41 Miles	580.00

On January 22, 1948, each of the Appellants filed in the Superior Court of Baltimore City a petition for a Writ of Mandamus, to compel the Commissioner of Motor Vehicles (1) to accept the Petitioners' applications for the issuance of a certificate of title for their respective motor vehicles and retain the sum of One Dollar ($1.00) for the transfer of the title in each case, which was the sum tendered the said Commissioner of Motor Vehicles by each of the Appellants in connection with their applications, and (2) to issue to the Appellants certificates of title for their respective public passenger motor vehicles in accordance with the provisions of the Annotated Code of Maryland, without the payment of a tax of 2% of the fair market value of said vehicle as provided by Section

25A of Article 66½ of the Annotated Code of Maryland.

The Commissioner of Motor Vehicles filed demurrers to each of the petitions and the Superior Court of Baltimore City, overruling the demurrers, issued the Writs of Mandamus as prayed.

The Court of Appeals of Maryland, on appeal by the Commissioner of Motor Vehicles, reversed the action of the Superior Court of Baltimore City, with costs, and dismissed the petitions for Writs of Mandamus, whereupon the Petition of Appeal to the Supreme Court of the United States accompanied by Assignment of Errors and this jurisdictional statement, is submitted.

That a substantial Federal question is presented is demonstrated by these cases:

McCullough v. *Maryland*, 4 Law Ed. 579; 4 Wheaton 316;

Gibbson v. *Ogden*, 6 Law Ed. 23, 9 Wheaton 1;

Smith v. *Turner*, 12 Law Ed. 702, 7 Howard, 283;

Cook v. *Pennsylvania*, 97 U. S. 566, 24 Law Ed. 1015;

Fargo v. *Michigan* (Fargo v. Stevens) 121 U. S. 230, 30 L. Ed. 888, 7 S. Ct. 857, 1 Inters. Com. Rep. 51;

Philadelphia & S. Mail S. S. Co. v. *Pennsylvania*, 122 U. S. 326, 30 L. Ed. 1200, 7 S. Ct. 1118, 1 Inters. Com. Rep. 308;

Leloup v. *Mobile*, 127 U. S. 640, 32 L. Ed. 311, 8 Sup. Ct. 1380;

Galveston H. & S. A. R. Co. v. *Texas*, 210 U. S. 217, 52 L. Ed. 1031, 28 S. Ct. 638;

Meyer v. *Wells, F. & Co.*, 223 U. S. 298, 56 L. Ed. 445, 32 S. Ct. 218;

Williams v. *Talladega*, 226 U. S. 404, 419, 57 L. Ed. 275, 33 Sup. Ct. 116;

Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 400, 57 L. Ed. 1511, 1541, 33 Sup. Ct. 729, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18;

United States Glue Co. v. *Oak Creek*, 247 U. S. 321, 328, 62 L. Ed. 1135, 1141, 38 Sup. Ct. 499, Ann. Cas. 1918E, 748;

Sprout v. *South Bend*, 277 U. S. 163, 171, 72 Law Ed. 833, 48 Sup. Ct. 562;

New Jersey Bell Tel. Co. v. *State Bd. of Taxes & Assessments*, 280 U. S. 338, 349, 74 L. Ed. 463, 469, 50 Sup. Ct. 111;

East Ohio Gas v. *Tax Commission*, 283 U. S. 465, 75 Law Ed. 1171, 51 Sup. Ct. 499;

Fisher's Blend Station v. *Tax Commission*, 297 U. S. 650, 655, 80 Law Ed. 956, 959, 56 Sup. Ct. 608;

Puget Sound Stevedoring Co. v. *Tax Commission*, 302 U. S. 90, *ante*, 64, 58 Sup. Ct. 72;

Western Live Stock v. *Bureau of Revenue*, No. 322, October Term, 1937 (303 U. S. 250, *ante*, 828, 58 Sup. Ct. 546, 115 A. L. R. 944);

Adams Mfg. Co. v. *Storen*, 304 U. S. 307, 82 Law Ed. 1365;

Gwin, White & Prince v. *Henneford*, 305 U. S. 434, 83 Law Ed. 272;

Best & Company v. *Maxwell*, 311 U. S. 454, 85 Law Ed. 274;

Nippert v. *Richmond*, 327 U. S. 416, 90 L. Ed. 760.

Taxes laid on interstate commerce without apportionment, or where inadequately apportioned are uniformly held invalid:

Norfolk & Western R. Co. v. *Pennsylvania*, 136 U. S. 114; 34 Law Ed. 394; 10 Sup. Ct. 958;

Allen v. *Pullman's Car Co.*, 191 U. S. 171; 48 Law Ed. 134, 24 Sup. Ct. 39;

Fargo v. *Hart*, 193 U. S. 490; 48 Law Ed. 761, 24 Sup. Ct. 498;

Union Transit Co. v. *Kentucky*, 199 U. S. 194; 50 Law Ed. 150, 26 Sup. Ct. 36;

Union Tank Line Co. v. *Wright*, 249 U. S. 275; 63 Law Ed. 602, 39 Sup. Ct. 276;

Wallace v. *Hines*, 253 U. S. 66; 64 Law Ed. 782, 40 Sup. Ct. 435;

Southern Ry. Co. v. *Kentucky*, 274 U. S. 76; 71 Law Ed. 394, 47 Sup. Ct. 542;

Johnson Oil Co. v. *Oklahoma*, 290 U. S. 158, 78 Law Ed. 238, 54 Sup. Ct. 152.

The following decisions of the Supreme Court of the United States are believed to sustain the jurisdiction of that Court on a direct appeal to review the final order, judgment or decree here in question:

Bush Co. v. *Maloy*, 267 U. S. 317, 69 Law Ed. 627, 45 Sup. Ct. 326;

Sprout v. *South Bend*, 277 U. S. 163, 72 Law Ed. 833, 48 Sup. Ct. 502;

Interstate Transit v. *Lindsey*, 283 U. S. 183, 75 Law Ed. 953, 51 Sup. Ct. 380;

Gwin, White & Prince v. *Henneford*, 305 U. S. 434, 83 Law Ed. 272, 59 Sup. Ct. 325;

Butler Bros. v. *McColgan*, 315 U. S. 501, 86 Law Ed. 991, 62 Sup. Ct. 701.

Respectfully submitted,

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Filed: May 5, 1949, Maurice Ogle, Clerk.

APPENDIX A

COURT OF APPEALS OF MARYLAND

No. 81

October Term, 1948

W. LEE ELGIN, COMMISSIONER OF MOTOR VEHICLES

vs.

CAPITAL GREYHOUND LINES

W. LEE ELGIN, COMMISSIONER OF MOTOR VEHICLES

vs.

PENNSYLVANIA GREYHOUND LINES, INC.

W. LEE ELGIN, COMMISSIONER OF MOTOR VEHICLES

vs.

RED STAR MOTOR COACHES, INC.

Marbury, C.J., Delaplaine, Collins, Grason, Henderson, Markell, JJ.

Opinion by COLLINS, J.

To be reported.
Filed: February 10, 1949.

These are three appeals by W. Lee Elgin, Commissioner of Motor Vehicles of the State of Maryland, (the Commissioner), appellant, from orders of the Superior Court of Baltimore City overruling his demurrers to petitions for mandamus filed by Capitol Greyhound Lines, a body corporate, (Capitol), Pennsylvania Greyhound Lines, Inc., a body corporate, (Greyhound), and Red Star Motor Coaches, Inc., a body corporate, (Red Star), appellees.

The petitions allege that the appellees are corporations engaged in the business of the public transportation of passengers for hire by motor vehicles. All of the appellees have operated pursuant to authority vested in them by the Interstate Commerce Commission. Appellee, Red Star, since 1938, has operated daily a passenger bus line be-

tween Rehobeth, Delaware, and Baltimore, a distance of approximately 120 miles, 64 miles of which are over state, state aid and improved county roads in Maryland. The particular operation is but part of an integrated bus system serving parts of Maryland, Delaware, and Pennsylvania. Appellee, Capitol, since November 30, 1930, has operated daily a passenger bus line between Cincinnati, Ohio, and Washington, D. C., a distance of approximately 496 miles, nine miles of which are over state, state aid and improved county roads of Maryland. Appellee, Greyhound, since April 25, 1930, has operated a passenger bus line between Philadelphia and Norfolk, a distance of approximately 245.3 miles. Greyhound operates the portion of the road between Philadelphia and the Maryland-Virginia state line, a distance of approximately 172.6 miles, 41 miles of which are over state, state aid and improved county roads of Maryland, the said route being a part of a nation wide integrated bus system.

Appellee, Red Star, transported over the above designated route for the period from June 1, 1947 to November 1, 1947, a total of 13,910 passengers producing total gross revenues of $21,087.18. 5,035 passengers in interstate commerce originating from or destined to points within Maryland thereby produced revenues of $11,324.41 of the aforesaid total gross revenues. Over this route it transported 6,577 intrastate passengers producing gross revenues of $9,015.89.

Appellee, Capitol, transported over its above designated route from October 1, 1946 to September 30, 1947, a total of 406,572 passengers with total gross revenues of $704,450. Of this number 1,509 traveled in interstate commerce producing $3,695.80 of the aforesaid total gross revenues. Over this route it transported in intrastate commerce 11 such passengers producing gross revenues of $3.25.

Appellee, Greyhound, over the above designated route from October 1, 1946 to September 30, 1947, transported a total of 168,684 passengers producing total gross revenues of $438,326.92. All of these passengers traveled exclusively in interstate commerce. Greyhound has no authority from the Public Service Commission of Maryland or from any

other agency authorizing it to transport passengers in intrastate commerce in Maryland.

Each of the appellees purchased a public passenger motor vehicle during the year 1947 necessary for use over its respective aforementioned routes and each obtained from the Public Service Commission of Maryland a permit authorizing it to operate this motor vehicle in interstate commerce over the roads and highways of the State of Maryland embraced in each of its respective routes. Red Star purchased its vehicle on July 18, 1947, at a cost of $18,637.50. Capitol's vehicle was purchased on July 18, 1947, at a cost of $25,258.70. Greyhound's purchase was made on October 22, 1947, at a cost of $29,002.60.

Capitol and Greyhound on January 8, 1948, and Red Star on January 12, 1948, applied to the Department of Motor Vehicles for the issuance of a certificate of title for the public passenger vehicles purchased by them and each presented the permit obtained from the Public Service Commission of Maryland. Each application was made on forms provided by the Department of Motor Vehicles and each appellee tendered to that Department the sum of $1.00 with each application for the issuance of a certificate of title for each motor vehicle.

Appellees allege that by Article 81, Section 218, of the Annotated Code of Maryland, (1947 Supplement), Chapter 326 of the Acts of 1947, the issuance of a certificate of title for a motor vehicle is a prerequisite to the issuance of a registration certificate and distinguishing plates and markers, and by Article 66½, Section 20 of the Annotated Code of Maryland, (1947 Supplement), a registration certificate and distinguishing plates and markers are required before any motor vehicle may be operated over the highways of the State of Maryland.

Those three applications for the issuance of a certificate of title were refused by the Commissioner and the sum tendered in payment was returned to the appellees. In each case the Commissioner alleged that the amount tendered was insufficient and that the applicants were required to pay an excise tax of two percent on the fair market value of each public passenger motor vehicle as required by Section 25A of Article 66½ of the Annotated Code of Mary-

land, (1947 Supplement), Chapter 560, Section 25A of the Acts of 1947, as a condition precedent to the issuance of the certificate of title, the issuance of the certificate of registration and the distinguishing plates and markers, although the Commissioner admitted that the appellees had complied with all other requirements entitling them to a certificate of title. The appellees further allege that the amount of the additional tax demanded by the Commissioner from Red Star is $372.75, from Capitol $505.17, and from Greyhound $580. The appellees allege that the Commissioner cannot require the payment of this additional tax for the reason that Section 25A of Article 66½, supra, would impose an unlawful burden on interstate commerce in violation of the commerce clause of the Federal Constitution. The appellees ask that a writ of mandamus be issued to the appellant commanding him to accept the $1.00 tendered and to issue to the appellees a certificate of title for the aforesaid public passenger vehicles without the payment of the said two percent tax.

After the overruling of demurrers filed by the appellant to each of these petitions, the trial judge issued an order that the writs of mandamus be issued. He further provided that the order in each case be stayed pending the final determination by this Court and further that the appellees be excused from filing an appeal bond. From those orders by the trial judge, the appellant appeals here.

For the purposes of this opinion, the following tabulation is offered by the appellees:

	Entire Route Traveled	Operation in Maryland	Amount of Tax
Red Star	120 Miles	64 Miles	$372.75
Capitol	496 Miles	9 Miles	505.17
Greyhound	172 Miles	41 Miles	580.00

Article 1, Section 8, Clause 2 of the Federal Constitution, hereinafter referred to as the "Commerce Clause", gives to the Congress of the United States the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

Section 25A of Article 66½, supra, provides in part: "(Excise Tax for the Issuance of Certificates of Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued. * * * (c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland (1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11 (e) of said Article 89B."

The titling of Chapter 560 of the Acts of 1947, supra, states in part that the Act is "to provide for the financing, planning, constructing and maintaining of public roads in the State". The Act itself so provides. The trial judge found that the proceeds were to be used for servicing the debt on State highway construction bonds and the balance, if any, went to the construction fund of the State Roads Commission and were to be specifically used for road purposes. The appellees do not dispute this. In fact they state in their brief: "The proceeds of the challenged tax are now expressly allocated to the construction and maintenance of prblic highways * * *." There is no dispute that the money from this tax is used specifically for road purposes.

The primary question before us is therefore whether this tax, used specifically for road purposes, although having no specific relationship to road use, is a violation of the commerce clause of the Federal Constitution. The appellees

contend that this state tax imposed on interstate carriers for the privilege of using the roads of this State, unless purely nominal in amount, is valid only if not more than compensatory and the amount of the charge must necessarily be predicated upon the use made or the use to be made of the roads of Maryland. In other words, they contend that the charge in dispute must bear some reasonable relationship to the privilege of using the Maryland highways and, if not, it is repugnant to the commerce clause of the Federal Constitution.

The appellant, on the other hand, contends that the tax here in question is a reasonable and nondiscriminatory tax imposed upon the privilege of using the roads of the State of Maryland and is constitutional regardless of whether the tax bears any specific relationship to road use.

By Chapter 560 of the Acts of 1947, here in question, for the first time the tax was made to apply not only to the original issuance of the title certificate but also to any subsequent transfer of title. The new act also provided for the first time that the proceeds of the tax are to be used first for servicing the debt on the State highway construction bonds and the balance, if any, is to be paid to the construction fund of the State Roads Commission.

Where a tax on interstate motor carriers is allocated to state highway funds, it is an imposition on the privilege of using the state roads and is not a violation of the commerce clause if reasonable in amount and nondiscriminatory. Interstate Transit, Inc. vs. Lindsey, 283 U. S. 183, 186, 75 L. Ed. 953, (1931); Morf vs. Bingaman, 298 U. S. 407, 412, 80 L. Ed. 1245, (1936); Ingles vs. Morf, 300 U. S. 290, 294, 81 L. Ed. 653, (1937); Aero Mayflower Transit Co. vs. Board of R. R. Commissioners, 332 U. S. 495, 505, 92 L. Ed. 153, (1947).

The question before us is therefore narrowed as to whether this tax imposed upon the privilege of using the State roads, having no specific relationship to road use, is reasonable and nondiscriminatory. The burden of the proof is on the taxpayer to show that the tax is unreasonable. Clark vs. Paul Gray, Inc., 306 U. S. 583, 83 L. Ed. 1001, (1939).

In Morf vs. Bingaman, supra, decided in 1936, the State of New Mexico by a statute denied to all persons the use

of the highways of the State for the transportation of any motor vehicle on its own wheels, for the purpose of selling it or offering it for sale without a special permit. For this permit the statute levied a fee of $7.50 if the vehicle was transported by its own power and $5.00 if it was towed or drawn by another vehicle. The appellant, a resident and citizen of California, purchased new and used automobiles in other states and transported them, on their own wheels, over state highways to California, where he offered them for sale. He usually transported such cars over the highways of New Mexico for a distance of about 165 miles in processions, or caravans. The Supreme Court of the United States said in that case at page 412: "As the tax is not on the use of the highways but on the privilege of using them, without specific limitation as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than a fee based on mileage, is not a forbidden burden on interstate commerce. See Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, and Aero Mayflower Transit Co. v. Georgia Pub. Serv. Commission, 295 U. S. 285, 79 L. Ed. 1431, 55 S. Ct. 709, supra." It was further said at page 413: "There is nothing in the Fourteenth Amendment which requires classification for taxation to follow any particular form of words."

In the case of Dixie Ohio Express Company vs. State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, decided January 30, 1939, the appellant was an Ohio corporation engaged exclusively in interstate transportation as a common carrier of property for hire by motor vehicle including hauling between points in Georgia and points in other states. The State of Georgia imposed a maintenance tax on trucks and trailers used on State roads measured by the rated capacity or factory weight of the vehicle. This tax was from $50.00 to $75.00 annually. The Supreme Court of the United States said that consistently with the commerce clause of the Constitution a state could impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax as compensation for the privilege of using its highways for that purpose. The Court in that case held that the language of the statute disclosed the intention of the State to require payment of compensation for the

privilege of operating over its roads the specified vehicles for the transportation of property. It further held that this tax contained no hint of hostility to interstate commerce or a purpose to impose a charge on the privilege or business of interstate transportation. The Court further pointed out that the appellant would not claim that the privilege to operate for a year one hundred pieces of its equipment over any or all of the State roads of Georgia was not worth $6,000.00, the amount of the taxes in controversy.' The Court pointed out that the amounts paid for license tags, public service tags and taxes on gasoline were without significance in the case.

In the case of Aero Mayflower Transit Co. vs. Board of Railroad Commissioners, supra, decided December 8, 1947, the State of Montana imposed a flat tax of $10.00 annually upon each vehicle operated by a motor carrier over the highways of that State and a fee of one-half of one percent of the carriers gross operating revenue from its operations in Montana with an annual minimum of $15.00 per vehicle in consideration of the use of the highways and in addition to all other motor vehicle license fees and taxes. The Supreme Court of the United States in that case pointed out that the two flat taxes, one for $10.00 and the other for $15.00, payable annually upon each vehicle operated on Montana highways were declared to be in addition to all others and to be imposed "in consideration of the use of the highways of this State". The Court further said: "It is far too late to question that a state, consistently with the commerce clause may lay upon motor vehicles engaged exclusively in interstate commerce, or upon those who own and so operate them, a fair and reasonable, nondiscriminatory tax as compensation for the use of its highways. * * * And the aggregate amount of the two taxes taken together is less than the amount of similar taxes this Court has heretofore sustained. Cf. Dixie Ohio Exp. Co. *v.* State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, 59 S. Ct. 435, supra; Aero Mayflower Transit Co. *v.* Georgia Pub. Serv. Commission, 295 U. S. 285, 79 L. Ed. 1439, 55 S. Ct. 709, supra." The Court further said: "The exactions in the present case fall clearly within the rule of Morf *v.* Bingaman and its predecessors in authority, and therefore,

like that case, outside the decisions in the Interstate Transit and like cases. Both taxes are levied 'in consideration of the use of the highways of this state,' that is, as compensation for their use, and bear only on the privilege of using them, not on the privilege of doing the interstate business. Moreover, the flat $10 fee laid by § 3847.16 (a) is further identified as one on the privilege of use by the fact that 'unlike the general tax in Interstate Transit *v.* Lindsey, 283 U. S. 183, 75 L. Ed. 953, 51 S. Ct. 380, the levy of which was unrelated to the use of the highways, grant of the privilege of their use is by the present statute made conditional upon payment of the fee.'" In holding that the flat minimum of $15 annually was not unreasonable, the Court further said: "And appellant has advanced no tenable basis in rebuttal of the legislative declaration that this tax too is exacted in consideration of the use of the state's highways, i.e., for the privilege of using them, not for that of doing the interstate business. Here, as in Morf *v.* Bingaman, 'there is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways,' with enhanced wear, tear and hazards laying heavier burdens on the state for maintenance and policing than other types of traffic create. 298 U. S. 407, 411, 80 L. Ed. 1245, 1249, 56 S. Ct. 756. It is to compensate for these burdens that the taxes are imposed, and appellant has not sustained its burden, Clark *v.* Paul Gray, Inc. supra (306 U. S. at 599, 83 L. Ed. 1013, 59 S. Ct. 744), and authorities cited, of showing that the levies have no reasonable relation to that end. It is of no consequence that the state has seen fit to lay two exactions, substantially identical, rather than combine them into one, or that appellant pays other taxes which in fact are devoted to highway maintenance. For the state does not exceed its constitutional powers by imposing more than one form of tax. Interstate Busses Corp. *v.* Blodgett, 276 U. S. 249, 72 L. Ed. 551, 48 S. Ct. 230, supra; Dixie Ohio Exp. Co. *v.* State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, 59 S. Ct. 435, supra. *And, as we have said, the aggregate amount of both taxes combined is less than that of taxes heretofore sustained.* In view of these facts there is not

even semblance of substance to appellant's contention that the taxes are excessive." (Italics supplied here).

The largest tax before us here is in the amount of $580. Considering the life of the vehicles in this case, it is reasonable to suppose that such a vehicle will be in operation for at least five years. Assuming that five years is the standard life of the vehicle, the tax would be $116.00 a year. In view of the three late decisions of the Supreme Court of the United States just reviewed, Morf *vs.* Bingaman, supra: Dixie Ohio Express Co. *vs.* State Rev. Com., supra; Aero Mayflower Transit Co. *vs.* Board of R. R. Com., supra, we cannot say that the tax here in question must have a specific relationship to road use. When the Supreme Court of the United States said in the case of Dixie Ohio Express Co. *vs.* State Rev. Com., supra, that a yearly tax of from $50 to $75 on equipment not worth $6,000 is not discriminatory or unreasonable, we cannot say that a tax of $116.00 a year on a vehicle whose value is $29,000 is unreasonable or discriminatory. The amount of the tax here appears to be less than other taxes heretofore sustained by the Supreme Court of the United States. Aero Mayflower Transit Co. *vs.* Board of Railroad Commissioners, supra.

In this case no argument, or analysis of statistics in the petitions, has been presented on the question whether the tax, as applied to any particular one of the three cases before us is unreasonable or discriminatory. At the argument in this Court both parties were asked specifically whether the ruling of this Court might be different in one of the cases before us than in another. Neither party made any distinction in this respect. We were informed by the appellees that this was an "industry suit". In the circumstances it does not seem necessary or advisable for us to engage in statistical studies on a possible factual question which has not been raised.

Appellees further contend that the provisions of Section 218 of Article 81 and of Section 293 of Article 56 of the Annotated Code of Maryland render the imposition of the titling tax upon the appellees and other similarly situated invalid.

As Section 293 of Article 56 relates to intrastate carriers, we cannot see how that Section has any bearing on the

case before us, except to show that the two sections mentioned do not discriminate against interstate commerce.

Section 218 of Article 81 was first enacted as Chapter 593, Section 199 of the Acts of 1933, and is commonly known as the "seat-mile tax". This Section requires each owner of a motor vehicle to be used in interstate transportation of passengers for hire to pay a tax based on the number of passenger seats in the vehicle. It provided in part: "and no other additional fees, licenses or tax, shall be charged by the State or any County or municipal sub-division of the State except the property tax and gasoline tax on gasoline purchased in Maryland in respect to such vehicles or their operation." The only amendment to that Act is by Chapter 326, of the Acts of 1947, when the only change made was a reduction in the amount of that tax. The aforesaid quoted provision providing that "no other additional fees, licenses or tax, shall be charged" has remained in the Act since 1933 and remains in the Act as re-enacted by Chapter 326, of the Acts of 1947.

Appellees contend that Code, Article 66½, Section 25A, Chapter 560, Section 25A, of the Acts of 1947, here in question, and Code, Article 81, Section 218, Chapter 326, of the Acts of 1947, supra, cannot both be applied to the same vehicles and the Legislature never intended that Chapter 560, supra, be applicable to carriers subject to the provisions of Chapter 326, supra, and, as Chapter 326 provides that no other tax shall be levied, Chapter 560, supra, is not applicable to the appellees. Both Chapter 326 and Chapter 560 of the Acts of 1947 were approved by the Governor on April 16, 1947. The appellees say that as Chapter 326 was passed as an emergency measure, and hence became effective on the date of executive approval, (April 16, 1947), and Chapter 560 was not enacted as an emergency measure and hence did not become effective until June 1, 1947, the latter Act, Chapter 560, may be said to be the more recent law of the two acts. They contend that these two Acts patently "contain inconsistent and contradictory provisions, if Chapter 560 is to be construed as applying to carriers subject to the provision of Chapter 326." The appellees further contend that there is nothing in the language of Chapter 560 which repeals the provisions

of Chapter 326 and that a repeal by implication is not favored. Buchholtz *vs.* Hill, 178 Md. 280, 288; Pressman *vs.* Elgin, — Md. —, 50 A. 2d 560.

As pointed out by the appellees, where two or more acts of the Legislature are approved by the Governor on the same day, the later act in numerical order of chapters is considered the last expression of the legislative will. State *vs.* Davis, 70 Md. 237, 240; Musgrove *vs.* B. & O. R.R. Co., 111 Md. 629. We agree that as between Chapter 326 and Chapter 560, of the Acts of 1947, the latter is the more recent.

If there is any inconsistency between these two acts, Chapter 326 must yield to Chapter 560. This Court has stated on many occasions that the act passed last must prevail. Davis *vs.* State, 7 Md. 151, 159; Albert *vs.* White, 33 Md. 297, 305; Appeal Tax Court *vs.* Western Md. R. R. Co., 50 Md. 274, 296; Yunger *vs.* State, 78 Md. 574, 577; Musgrove *vs.* B. & O. R.R. Co., supra; Beall *vs.* Southern Md. Agri. Ass'n., 136 Md. 305, 312. The appellees here admit that Chapter 560 is the more recent law of the two acts. We must therefore hold to the extent of the conflict between Chapter 326 and Chapter 560, that Chapter 560 prevails and the prohibition of Chapter 326, of the Acts of 1947, cannot apply to the taxes imposed by Chapter 560, of the Acts of 1947.

Appellees further contend that the titling tax, Article 66½, Section 25A, (1947 Supplement of the Code), supra, here in question, has never been applied to interstate vehicles until after the amendment by Chapter 560, of the Acts of 1947, and therefore the construction placed upon that tax by administrative interpretation has obtained the force of law. Popham *vs.* Conservation Commission, 186 Md. 62, 71; Bouse *vs.* Hutzler, 180 Md. 682, 687; Atkinson *vs.* Sapperstein, — Md. —, 60 A. 2d 737, 740. We must note, however, that in the past the tax here in question has been applied at various times to the "State Emergency Relief Fund" and to the "State Fund for Aid to the Needy" and for the first time by Chapter 560, of the Acts of 1947, the proceeds of this tax have been applied specifically to road purposes. Evidently it was thought that because the tax, here in question, was not applied specifically to road

purposes it could not be levied on interstate commerce and for that reason was not levied on the appellees, but now that the tax is specially applied to road purposes, it can be applied to the appellees. This explains the former administrative interpretation.

For the reasons herein given, we are of opinion that the demurrers to the petitions should have been sustained and the petitions of the appellees dismissed.

Orders reversed, with costs, and petitions dismissed.

APPENDIX "B"

OPINION OF SUPERIOR COURT OF BALTIMORE CITY

SHERBOW, J.:

Three interstate bus lines filed petitions for writs of mandamus against the Commissioner of Motor Vehicles to compel the issuance of certificates of title to motor buses without the payment of the 2% titling tax imposed by Section 25A of Article 66½ of the Code, 1947 Supplement.

Demurrers have been filed raising the following questions:

1. Does the 2% titling tax violate the commerce clause of the Federal Constitution as applied to interstate carriers?

2. Does Section 218 of Article 81 of the Code, as amended by Chapter 326 of the Acts of 1947, prohibiting the imposition of "additional fees, licenses or tax," include the 2% titling tax?

I

By various provisions of the law an interstate carrier, operating within the State of Maryland, is required to register its vehicles in this State.[1] Motor vehicle owners using vehicles in the interstate transportation of passengers over State roads are required to obtain permission covering such operation from the Public Service Commission of

[1] Code Article 66½, Sec. 21.

Maryland.[2] The carrier cannot register its vehicles or operate over Maryland highways until a certificate of title is obtained for each vehicle.[3] Payment of $1.00 is required for the registration card and certificate of title.[4]

In addition a "seat mile tax" is imposed. This is a levy equal to one-thirtieth of a cent for each passenger seat multiplied by the total number of miles travelled over the State roads.[5]

The Department of Motor Vehicles seeks to require these interstate carriers to pay an excise tax of two per cent of the fair market value of every vehicle upon the issuance of every original certificate of title, and for every subsequent certificate in the case of sales of the vehicles, in accordance with the provisions of Section 25(a) of Article 66½, as amended by Chapter 560 of the Acts of 1947.[6]

The titling tax was first levied in Maryland in 1935 at the rate of one per cent and the proceeds were paid into a special account in the State Treasury called the "State Emergency Relief Fund."[7] Later the Act was amended to provide that the proceeds be paid into the "State Fund for Aid to the Needy."[8] In 1939 the levy was increased to two per cent, and the proceeds were paid into the general funds of the State.[9]

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[2] Article 81, Sec. 218, as amended by Chapter 326 of the Acts of 1947.

[3] Article 66½, Sec. 22, as amended by Chapter 17 of the Acts of 1947.

[4] Article 66½, Sec. 25.

[5] Article 81, Sec. 218, as amended above.

[6] The Section reads:

"In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued."

[7] Chapter 539, Acts of 1935.

[8] Chapter 3, Acts of 1936.

[9] Sec. 74, Chapter 277, Acts of 1939.

Chapter 560 of the Acts of 1947 made several important changes in the law. The tax was made applicable not only to original title certificates but to subsequent transfers. The proceeds were to be used for servicing the debt on State highway construction bonds, and the balance, if any, went to the construction fund of the State Roads Commission.

Thus it appears that in 1947, for the first time, the proceeds of this excise tax on motor vehicles were to be used specifically for roads purposes. Prior to 1947 the petitioners and all other interstate carriers similarly situated were not required to pay the tax.

When the titling tax was first enacted an effort was made by the Motor Vehicle Commissioner to collect the tax from interstate carriers. Mandamus proceedings were instituted by the Pennsylvania Greyhound Transit Company in the Court of Common Pleas on February 12, 1936, to compel issuance of certificates of registration without payment of the tax. The petition alleged that no part of the proceeds was used directly or indirectly in connection with the State's roads or for the expenses of the office of the Commissioner of Motor Vehicles. After considering the law, the Attorney-General instructed the Commissioner to issue the certificates without payment of the tax and thereupon the Court granted the writ of mandamus as prayed, stating in the order that it was of the opinion that the law did not apply to any motor vehicle bus operating in interstate commerce.

By the 1947 amendment the proceeds will be used for roads purposes, and the interstate carriers now seek to prevent the State from collecting the two per cent titling tax from them.

The Court must decide whether this excise tax constitutes a direct and material burden on interstate commerce. In other words, may this tax lawfully be imposed on public passenger motor vehicles using the highways of Maryland in interstate commerce? The language of the statute itself is all-inclusive; it makes no exception in favor of interstate carriers.

The commerce clause of the Federal Constitution has caused more litigation and controversy than any other constitutional provision. Interstate carriers may be required

to pay registration, licensing and transportation taxes of various kinds in each State of operation.

Many cases have been decided by the Supreme Court dealing with the question of whether the States may lawfully impose a tax on interstate carriers.

A non-discriminatory tax, not confiscatory in amount, fixed by a uniform, fair and practical standard, was upheld as constituting no burden on interstate commerce in an early case arising out of the Maryland requirement that non-residents obtain and pay registration fees if they used our highways.[10] In the absence of actual discrimination the State may tax interstate carriers by a method different from that applied to intrastate carriers.[11]

States may impose taxes for the use of the roads and enforcement of regulations, whether on the basis of gross ton mileage,[12] or a flat charge per vehicle,[13] or on vehicles engaged exclusively in interstate commerce.[14] More than one tax may be imposed and the proceeds may go into the State's general fund, provided the taxes are fair and reasonable, non-discriminatory, and are compensation for the use of the highways.[15]

A flat tax, substantial in amount; the same for buses used continuously in local service as for interstate buses making one trip daily, was not upheld, the Court stating that such a tax "could hardly have been designed as a measure of the cost of value of the use of the highways."[16]

A privilege tax imposed by the State of Tennessee on interstate bus operators graduated according to the carrying capacity of the vehicle, and amounting to about $500 for a medium size vehicle, was held invalid as applied to interstate operators. In the case of Interstate Transit, Inc.

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[10] *Hendrick* v. *Maryland*, 235 U. S. 610 (1915).

[11] *Interstate Buses Corp.* v. *Blodgett*, 276 U.S. 245.

[12] *Continental Baking Co.* v. *Woodring*, 286 U. S. 352.

[13] *Aero Mayflower Transit Co.* v. *Georgia P.S.C.*, 295 U. S. 285.

[14] *Dixie Ohio Express Co.* v. *State Rev. Comm.*, 306 U. S. 72.

[15] *Aero, etc.*, v. *R. R. Comms.*, 332 U. S. 495 (1947).

[16] *Sprout* v. *South Bend*, 277 U. S. 163.

v. Lindsey, 293 U.S. 193 (1931), the Supreme Court, speaking through Mr. Justice Brandeis, said:

> "A detailed examination of the statute under which the tax here challenged was laid makes it clear that the charge was imposed not as compensation for the use of the highway but for the privilege of doing the interstate bus business. * * *
>
> "It is suggested that a tax on buses graduated according to carrying capacity is common and is a reasonable measure of compensation for use of the highways. It is true that such a measure is often applied in taxing motor vehicles engaged in intrastate commerce. * * * But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only as compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State. In the present act the amount of tax is not dependent on such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except insofar as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed or the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate buses."

In the recent case of Aero Transit Co. *v.* Commissioners, 332 U. S. 495, decided December 8, 1947, the Supreme Court upheld two Montana levies. One was a flat tax of $10.00 for each vehicle operated over the State's highways, and the other was a quarterly fee of one-half of one per cent of the motor carrier's gross operating revenue with a minimum annual fee of $15.00 per vehicle. The tax was

declared expressly to be laid "in consideration of the use of the highways of the State," and in addition to all other licenses, fees and taxes. The Montana Supreme Court held that "gross operating revenue" meant only such revenue as was derived from the carrier's operations within Montana, not outside that State. The Supreme Court of the United States limited its consideration of the "gross revenue" tax to the flat $15.00 minimum fee because of the doubt raised as to the basis of calculation above that figure. The Court said:

> "With the issues thus narrowed, we have, in effect, two flat taxes, one for $10.00, the other for $15.00 payable annually upon each vehicle operated on Montana highways in the course of appellant's business, with each tax expressly declared to be in addition to all others and to be imposed 'in consideration of the use of the highways of this State.'
>
> "Neither exaction discriminates against interstate commerce. Each applies alike to local and interstate operations. Neither undertakes to tax traffic or movements taking place outside Montana, or the gross revenues from such movements or to use such revenues as a measure of the amount of the tax. * * *"

In this case the Supreme Court held that it was immaterial that the proceeds of the two taxes go into the State's general fund for general State purposes. The taxes were "laid for the privilege of using the highways" and their aggregate amount was less than similar taxes already sustained.

These cases and the many others cited by counsel in their excellent and complete briefs, and in argument, set out the principles to govern the Court in determining whether or not the Maryland two per cent titling tax is valid as applied to these interstate carriers.

This excise tax is based on the fair market value of the vehicle when titled. The amount of the tax bears no relationship, reasonable or direct, to the use of the highways of the State.

Wear and tear on the highways, mileage travelled, weight of the vehicles, carrying and earning capacity, are not the

yardstick used for measuring the impost, but only the value of the vehicle when titled.

It is not an annual tax falling on all in like position equally. It is paid only when title changes. A carrier making frequent replacements of its equipment is penalized in favor of one who keeps old vehicles on the highways.

The tax is a heavy one, and on present day costs ranges from $400 to $600 as each new vehicle is titled. To avoid the impost carriers may well utilize new equipment elsewhere transferring old and less valuable vehicles to their Maryland run.

The striking inequalities of the application of the tax are shown when we compare each company's operation in Maryland with the entire route travelled, as shown by the following table:

	Entire Route Traveled	Operation in Maryland
Red Star	120 Miles	64 Miles
Capital	496 Miles	9 Miles
Greyhound	172 Miles	41 Miles

If each carrier purchased a bus for $20,000 and paid $400 titling tax, the inequalities are self-evident, If Red Star purchased a secondhand bus for $10,000 and used it over 64 miles of Maryland roads it would pay $200 tax. If Capital purchased (as it actually did) a vehicle costing slightly over $25,000, it would pay $500. Red Star operates over 64 miles of Maryland roads and Capital only 9 miles in Maryland.

When the tax is paid again depends not on conditions arising directly from operations in Maryland, but a host of other factors, including general economic conditions, availability of equipment, the financial condition of the individual carrier, etc.

The disparity in the impact of the tax becomes even more apparent when revenues derived from interstate operations in Maryland are considered. The data furnished the Court is not complete, but it shows clearly that based upon passenger revenues and passengers carried, the amount of the tax bears no reasonable relationship to the use of Maryland highways.

It may be argued that the tax is non-recurring as applied to a particular vehicle, and when measured over the life of the vehicle may not be burdensome. But the tax is on the *value* of the vehicle, not its *use* on the highways. The effect on each carrier is different and it varies from year to year; not according to mileage in Maryland, but to other factors.

It is not the frequency of use that determines the tax, nor revenues, nor anything else pertaining to highway operations, only when it is purchased and for how much.

Such a tax, aside from being discriminatory and bearing no relationship to highway use, is a burden on interstate commerce. The tax is high and if valid in Maryland may well be imposed elsewhere. States, like all other political sub-divisions, are constantly seeking new sources of revenue. Such an impost when applied to interstate commerce may well become a most serious economic burden. A carrier operating in several States and required to make heavy replacements might well find itself unable to do so because of the impact of the tax in several States.

Viewing the situation realistically, we must also bear in mind that while the tax was only one per cent when first levied and was increased to two per cent, after four years, it may be increased again. The history of taxation, especially gasoline and income taxes, shows that steady and sometimes precipitate increases occur, and while they may be decreased, they are rarely withdrawn.

The tax imposed on interstate carriers and approved by the Courts all relate to use of the highway with the tax measured by some fair standard, or where the tax or fee is so small as to be a fair contribution to the cost of administration or maintenance of the roads system. Registration fees are on an annual basis; gasoline taxes are based in practical effect on consumption and use. These and all other taxes that have been upheld are paid by all similarly situated at the same time. In no instance have counsel or the Court been able to find such a tax levied on interstate carriers based on the *value* of the vehicles.

The Court finds that as applied to these interstate carriers and others similarly situated the tax is invalid and the relief

prayed will be granted. An appropriate order will be signed when presented.

II

Section 218 of Article 81, dealing with motor vehicles used in interstate transportation, provides that after the levying of the taxes therein mentioned "no other additional fees, licenses or tax, shall be charged by the State or any County or Municipal subdivision of the State except the property tax and gasoline tax on gasoline purchased in Maryland in respect to such vehicles or their operation."

Section 293 of Article 56 is to the same effect and is applicable to intrastate operations. Counsel urge that these provisions forbid the imposition of the 2% titling tax. The Court's views having been expressed, holding this titling tax invalid as applied to interstate carriers, and the titling tax applicable to intrastate vehicles not being before the Court, it becomes unnecessary to discuss this contention.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 118

CAPITOL GREYHOUND LINES, PENNSYLVANIA GREYHOUND LINES INC., and RED STAR MOTOR COACHES, INC.,

Appellants,

vs.

ARTHUR H. BRICE,
Commissioner of Motor Vehicles,
State of Maryland,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF OF APPELLANTS

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The Daily Record Co., Baltimore 3, Md.

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APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF OF APPELLANTS

OPINIONS DELIVERED IN COURTS BELOW

The opinion delivered by the Court of Appeals of Maryland is reported in 64 Atlantic (2d) at page 284 as *Elgin v. Capitol Greyhound Lines, Elgin v. Pennsylvania Greyhound Lines, Inc., Elgin v. Red Star Motor Coaches, Inc.* At the date hereof the opinion of the Court of Appeals of Maryland (hereinafter referred to as "the state court") is unreported in the Maryland Reports, the last volume of

such reports containing no reference to opinions or orders dated subsequent to June 11, 1947.

The opinion delivered by the Superior Court of Baltimore City (Sherbow, J.) is likewise unreported. A copy thereof has been made a part of the printed record in this case, however, and appears in the Transcript of Record beginning on page 1.

JURISDICTION

This appeal is entered pursuant to the provisions of Title 28, Section 1257 (2) of the United States Code, which provides for an appeal from a decree of the highest court of a State in which a decision may be had, where the validity of a statute of a state is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

On January 22, 1948, Appellants filed in the Superior Court of Baltimore City petitions seeking the issuance of writs of mandamus to compel the Commissioner of Motor Vehicles of Maryland to issue certificates of title for their respective motor vehicles without the payment of the tax of 2% of the fair market value of each of the vehicles as provided by Section 25A, Article 66½ of the Annotated Code of Maryland. That Court issued the writs as prayed, whereupon the Commission of Motor Vehicles entered an appeal to the Court of Appeals of Maryland on June 30, 1948.

The specific question decided by the state court in its opinion (Record, page 28), in which it reversed the orders of the lower court and dismissed the petitions, was that Section 25A, Article 66½, as applied to vehicles used in interstate commerce, is not repugnant to the Commerce Clause of the Federal Constitution as being an unreasonable

and unlawful burden upon interstate commerce. In reversing the lower court, the Court of Appeals of Maryland upheld the validity of the aforementioned statute. That Court is the highest court in the State of Maryland in which a decision can be had.

It is respectfully submitted, therefore, that the jurisdiction of the Supreme Court of the United States attached in this cause under Title 28, Section 1257 (2) of the United States Code.

STATEMENT OF THE CASE

Capitol Greyhound Lines (hereinafter sometimes called "Capitol") since November 30, 1930 has, pursuant to authority vested in it by the Interstate Commerce Commission, operated daily a passenger bus line between Cincinnati, Ohio and Washington, D. C., a distance of approximately 496 miles, 9 miles of which are over state, state aid and improved county roads of Maryland. Capitol operates over the said route as part of an integrated bus system serving several states. (Record p. 18).

Pennsylvania Greyhound Lines, Inc. (hereinafter sometimes called "Greyhound") and its wholly owned subsidiary (Pennsylvania Greyhound Lines of Virginia, Incorporated) since April 25, 1930 have, pursuant to authority vested in them by the Interstate Commerce Commission, operated daily a passenger bus line between Philadelphia, Pennsylvania and Norfolk, Virginia, a distance of approximately 245.3 miles. Greyhound operates a portion of the route between Philadelphia, Pennsylvania and the Maryland-Virginia State line, a distance of approximately 172.6 miles, 41 miles of which are over state, state aid and improved county roads of Maryland. Greyhound operates over the said route as part of a nation-wide bus system.

Each of these two corporations is duly qualified to do business in the State of Maryland (Record, pp. 9, 10, 25).

Red Star Motor Coaches, Inc. (hereinafter sometimes called "Red Star") since 1938, has, pursuant to authority vested in it by the Interstate Commerce Commission, operated daily a passenger bus line between Rehoboth, Delaware and Baltimore, Maryland, a distance of approximately 120 miles, 64 miles of which are over state, state aid and improved county roads of Maryland (Record, pp. 13, 14, 25). The particular operation is but part of an integrated bus system serving substantial parts of the States of Maryland, Delaware and Pennsylvania.

All three of the Appellants are corporations engaged in the business of the public transporation of passengers for hire by motor vehicle (Record, p. 25).

Capitol, over its above described route, transported, for the period from October 1, 1946 to September 30, 1947, a total of 406,572 passengers thereby producing total gross revenues of $704,450.00. A total of 1,509 of said passengers traveling in *interstate* commerce, originated from or were destined for points within the State of Maryland thereby producing $3,695.80 of the aforesaid total gross revenues. Over its said route, Capitol also transported, pursuant to authority vested in it by the Public Service Commission of Maryland, passengers traveling in *intrastate* commerce, originating from and destined for points solely within the State of Maryland and for the aforesaid period it transported 11 of such passengers thereby producing gross revenues of $3.25 or an infinitesimal fraction of 1% of the aforesaid total gross revenues derived from the particular operation (Record, p. 18). The remaining number of passengers neither were originated in nor were destined for points in Maryland.

Greyhound and its said wholly owned subsidiary, over its previously described route, transported for the period from October 1, 1946 to September 30, 1947, an estimated total of 168,684 passengers thereby producing total gross revenues of $436,326.92. All of these passengers travelled *exclusively in interstate commerce* from (a) points in the State of Maryland to points located out of the State of Maryland and (b) points out of the State of Maryland to points in the State of Maryland and (c) points out of the State of Maryland to other points out of the State of Maryland via roads or highways in the State of Maryland. Greyhound possesses no authority from the Public Service Commission or any other regulatory agency authorizing it to transport passengers in *intrastate* commerce within the State of Maryland, and during the aforesaid period Greyhound transported no passengers in intrastate commerce within the State of Maryland (Record, p. 10).

Red Star, over its above designated route, transported for the period from June 1, 1947 to November 1, 1947, a total of 13,910 passengers, thereby producing total gross revenues of $21,087.18. A total of 5,035 of such passengers travelled in *interstate* commerce, originating from or destined for points within the State of Maryland, thereby producing $11,324.41 of the aforesaid total gross revenues. Over its said route, Red Star also transported, pursuant to authority vested in it by the Public Service Commission of Maryland, passengers traveling in *intrastate* commerce, originating from and destined for points solely within the State of Maryland, and, for the aforesaid period, it transported 6,577 of such intrastate passengers thereby producing gross revenues of $9,015.89 or approximately 42% of the aforesaid total gross revenues derived from the particular operation (Record, p. 14). The remaining number of total passengers neither were originated in nor destined to points in Maryland.

Capitol, Greyhound and Red Star each purchased a public passenger motor vehicle during the year 1947 necessary for use over its respective aforementioned route and obtained from the Public Service Commission of Maryland a permit authorizing it to operate its motor vehicle in interstate commerce over the roads and highways in the State of Maryland embraced in its repective route. The vehicle purchased by Red Star was purchased on July 18, 1947 at a cost of $18,637.50, the vehicle purchased by Capitol was purchased on July 18, 1947 at a cost of $25,258.70 and that of Greyhound was purchased on October 22, 1947 at a cost of $29,002.60 (Record, pp. 10, 14, 18).

On January 8, 1948, Capitol and Greyhound applied to the Department of Motor Vehicles for the issuance of a certificate of title for the public passenger motor vehicles purchased by each of them and presented the required certificate of mileage proposed to be operated in Maryland as issued by the Public Service Commission of Maryland. On January 12, 1948, Red Star made a similar application with respect to the vehicle purchased by it and presented a similar certificate of mileage as issued by the Public Service Commission to it. Each of these applications was made on forms provided by the Department of Motor Vehicles and tender was made to the Department of the sum of $1.00 with each application for the issuance of a certificate of title for each vehicle. By Sec. 218 of Art. 81 of the Annotated Code of Maryland, as amended by Chapter 326 of the Acts of 1947, the issuance of a certificate of title for a motor vehicle is a prerequisite to the issuance of a registration certificate and distinguishing plates and markers. By Sec. 20 of Art. 66½ of the Annotated Code of Maryland (1943 Supp.) a registration certificate and distinguishing plates and markers are required before any motor vehicle may be operated over state, state-aid, improved county roads,

and streets and roads of incorporated towns and cities in the State of Maryland (Record, p. 26).

With respect to each of the three applications for the issuance of a certificate of title, the action of the Department of Motor Vehicles, acting under the instructions of its administrative head, the Commissioner of Motor Vehicles, was the same in that the application was refused and the sum tendered in payment was returned to the particular applicant. In each instance, the Commissioner of Motor Vehicles alleged that the amount tendered was insufficient and that the applicant was required to pay an excise tax of 2% on the fair market value of the vehicle for which a certificate of title was sought as a condition precedent to the issuance of the certificate of title and, therefore, to the issuance of a certificate of registration and distinguishing plate and markers. The said excise tax is imposed by Section 25A of Art. 66½ of the Annotated Code of Maryland (1947 Supp.). Such tax would amount to $372.75 in the case of Red Star, $505.17 in the case of Capitol and $580.00 in the case of Greyhound (Record, pp. 10, 15, 19, 27).

The inequalities of the application of the tax are best demonstrated by a comparison of each company's operation in Maryland with the entire route travelled and the amount of tax sought to be charged against each of the Appellees as shown by the following table:

	Entire Route Travelled	Operation in Maryland	Amount of Tax
Red Star	120 Miles	64 Miles	$372.75
Capitol	496 Miles	9 Miles	505.17
Greyhound	172 Miles	41 Miles	580.00

It is not disputed that, with the exception of the payment of the titling tax, each of the Appellees has complied with all of the prerequisites necessary to be met for the issuance of the certificates of title sought (Record, p. 27).

On January 22, 1948, each of the Appellants filed in the Superior Court of Baltimore City a petition for a Writ of Mandamus, to compel the Commissioners of Motor Vehicles (i) to accept the Appellants' applications for the issuance of a certificate of title for their respective motor vehicles and retain the sum of One Dollar ($1.00) for the transfer of the title in each case, as tendered by each of your Appellants in connection with their respective applications, and (ii) to issue to the Appellants' certificates of title for their respective public passenger motor vehicles in accordance with the provisions of the Annotated Code of Maryland, without the payment of a tax of 2% of the fair market value of said vehicle as provided by Sec. 25A of Art. 66½ of the Annotated Code of Maryland. Writs of Mandamus in each case were prayed on the ground, *inter alia*, that the said Sec. 25A of Art. 66½ is unconstitutional, as imposing an unreasonable and unlawful burden upon interstate commerce in violation of the Commerce Clause of the Federal Constitution (Record, pp. 11, 12, 16, 20).

Demurrers to each of the petitions were filed by the Commissioner of Motor Vehicles, the demurrers were overruled and answers were thereafter filed admitting all allegations of fact in the said petitions. After argument by counsel for all parties but without further hearing on June 14, 1948, the Superior Court of Baltimore City entered an order providing for the issuance of Writs of Mandamus as prayed in each of the three cases on the ground, *inter alia*, that Sec. 25A of Art. 66½ of the Annotated Code of Maryland imposes an unreasonable and unlawful burden on interstate

commerce in contravention of the Federal Constitution (Record, pp. 13, 17, 21).

On June 30, 1948, the Commissioner of Motor Vehicles of the State of Maryland, entered an appeal to the Court of Appeals of Maryland from the aforementioned orders of the Superior Court of Baltimore City, directing that Writs of Mandamus be issued.

On February 10, 1949, after the submission of briefs and oral argument in the cause, the state court in an opinion filed that date, reversed the orders of the Superior Court of Baltimore City, with costs, and dismissed the petitions of the Appellants (Record, p. 24). The mandate of the state court was thereafter issued on March 12, 1949.

On May 5, 1949, upon petition by the Appellants, an appeal to this Court was allowed by Honorable Ogle Marbury, Chief Judge of the Court of Appeals of Maryland and on October 17, 1949, this Court entered an order noting probable jurisdiction on this case (Record, pp. 38, 42).

SPECIFICATION OF THE ASSIGNED ERRORS TO BE URGED

The Appellants assign as errors:

1. That the Court of Appeals of Maryland erred in holding that Section 25A of Article 66½ of the Annotated Code of Maryland, imposing a tax of 2% upon the fair market value of motor vehicles used in interstate commerce as a condition precedent to the issuance of certificates of title thereto (the issuance of such certificates being a further condition precedent to the registration and operation of such vehicles in the State of Maryland) was not in contravention of Article I, Section 8, Clause 3, of the Federal Constitution.

2. That the Court of Appeals of Maryland erred in holding that the State of Maryland is not prohibited by Article I, Section 8, Clause 3, of the Federal Constitution from imposing a tax upon Appellants based upon the fair market value of vehicles used in interstate commerce, as a condition precedent to permitting Appellants to engage in interstate commerce over the public highways of Maryland.

3. That the Court of Appeals of Maryland erred in holding that the State of Maryland is not prohibited by Article I, Section 8, Clause 3, of the Federal Constitution from imposing upon Appellants, as public carriers of passengers for hire by motor vehicle in interstate commerce over the public highways of Maryland, a tax of 2% of the fair market value of each motor vehicle as a condition precedent to such use without regard to the relationship between the use of roads made by such vehicles and the amount of the tax.

ARGUMENT

The three assigned errors raise the basic question of whether or not the provisions of Article 66½, Section 25A of the Annotated Code of Maryland (1947 Supplement) insofar as the same require the payment of the excise tax by interstate carriers as therein provided, constitute an unreasonable and unlawful burden on interstate commerce in contravention of Article I, Section 8 of the Constitution of the United States.

The controversial Section above-mentioned is herewith set out in full:

> "25A. (Excise Tax for the Issuance of Certificates of Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issu-

ance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued.

"(b) The Department of Motor Vehicles shall require every applicant to supply information as it may deem necessary as to the time of purchase, the purchase price and other information relative to the determination of the fair market value.

"(c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland (1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11(e) of said Article 89B.

"(d) Certificates of title for all motor vehicles owned by the State of Maryland or any political subdivision of the State and for fire engines and other fire department emergency apparatus, including ambulance operated by or in connection with any fire department, shall be exempt from the tax imposed by this Section."

In its opinion the state court, we submit, erred as a matter of law in concluding that "Where a tax on interstate motor carriers is allocated to state highway funds, it is an imposition on the privilege of using the state roads and is not a violation of the commerce clause if reasonable in amount and non-discriminatory (Record, p. 29). This, we contend, is not the conclusion to be reached by a proper

interpretation of the opinions cited by the Court in support of its opinion and of its decree, as will be hereafter shown. To the contrary, we respectfully assert that these opinions hold that a tax of the character here involved is valid only if the same bears some reasonable relationship to the use of the highways by the carrier concerned.

Assuming, however, the state court's conclusion to be a correct statement of the law, then, it is submitted, that court erred in applying the law and in finding the tax imposed by Article 66½, Section 25A of the Annotated Code of Maryland (1947 Supplement) to be reasonable in amount. The court, for the purpose of determining that the tax is reasonable took the largest single tax imposed upon the three Appellants, *gratuitously assumed the usable life of Appellants' motor buses to be five years, divided the amount of tax by five, and found that the resulting annual tax was reasonable in amount* (Record, p. 32). Without laboring the point at this preliminary stage of the argument, it must be pointed out that the finding by the state court that the normal life of the Appellants' vehicles is five years was not supported by any allegations disclosed on the face of the pleadings or by any evidence of any nature whatsoever in the record and yet it was upon a mere *assumption* of such a period of usable life that the Court of Appeals based its final conclusion that the amount of the annual tax was reasonable. As we shall hereafter point out, the life expectancy of a particular vehicle constitutes no valid measure for determining the reasonableness of a tax of the character herein challenged and yet it was that sole measure which the state court adopted.

I.

The Tax Imposed by Article 66½, Section 25A, is a Burden upon Interstate Commerce because it is Unrelated to Road Use and is Non-Compensatory in amount.

It is the first contention of the Appellants that such tax as is here imposed *must bear a direct relationship to the use made or to be made of the roads and that such a tax is valid only if compensatory in amount.* This is a wholly different proposition from that advanced by the Appellee below and adopted by the state court in reaching its conclusion that the tax is constitutional simply if it happens to be reasonable in amount and the proceeds therefrom are dedicated to the construction or maintenance of highways. The cases relied upon to support the conclusion reached by the lower court do not have that effect we submit but, to the contrary, support the contentions of the Appellants.

At the outset, it is considered vital to a determination of the constitutional issue to consider the legislative history of Article 66, Section 25A of the Annotated Code of Maryland. The tax therein levied and here in question was first adopted in 1935 by Chapter 539 of the Acts of the General Assembly of Maryland of that year and the rate then imposed was 1% of the fair market value. The proceeds of the tax were required to be paid into a special account in the State Treasury known as the "State Emergency Relief Fund." Chapter 3 of the Acts of 1936 amended the prior Act to provide that the proceeds of the tax should be paid into the "State Fund for Aid to the Needy." Chapter 560 of the Acts of 1947 amended the law in two vital respects as regards this litigation. For the first time the tax was to be applied not only upon the issuance of an original certificate of title, but upon subsequent transfers as well. And

also for the first time the proceeds were to be used generally for highway purposes by providing first for the servicing of State Highway construction bonds and the balance to be paid into the construction fund of the State Roads Commission (Record, pp. 2-3).

In addition to the tax here sought to be levied, an annual seat-mile tax is levied upon registration of each vehicle by Article 81, Section 218 of the Annotated Code of Maryland (1947 Supp.).

It may thus be seen that this tax, originally levied as a relief measure during the depression years, is now sought to be levied upon interstate carriers without change in its original design except as regards allocation of the proceeds. The validity thereof is sought to be sustained for the sole reason that the proceeds from the collection of the tax are now used for general road purposes without regard to road use and on the bland assumption that, since it is but 2% of the fair value of the vehicle, it must necessarily be reasonable in amount. An examination of the cases decided by this Court cannot support the validity of this tax, we most earnestly submit.

The extent to which a state may impose various kinds of taxes on motor vehicles operating in interstate commerce has been considered many times by this Court. One of the earliest of such cases, *Hendrick v. Maryland*, 235 U. S. 610, 59 L. Ed. 389 (1915), involved the constitutional validity of provisions of the Maryland law which required certain non-residents to register their vehicles in this state and pay a registration fee graduated according to the horsepower of their vehicles before they would be permitted to use the Maryland roads. It was held that it was within the constitutional power of the states to enact such regulations

and that the protection of the commerce clause was not infringed. The Court made these general statements:

> "In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles — those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horsepower of the engines — a practical measure of size, speed, and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce. The reasonableness of the State's action is always subject to inquiry in so far as it affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress. * * *
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> "In view of the many decisions of this court there can be no serious doubt that where a State at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the State itself; *and so long as they are reasonable and are fixed according to some uniform, fair and practical standard* they constitute no burden on interstate commerce. * * * The action of the State must be treated as correct unless the contrary is made to appear. * * *" (Emphasis supplied.)

A similar New Jersey regulation which required the licensing of non-resident motorists and registration of their vehicles and exacted a fee therefor was sustained in *Kane v. New Jersey*, 242 U. S. 160, 61 L. Ed. 223 (1916).

In *Clark v. Poor*, 274 U. S. 554, 71 L. Ed. 1199 (1927), a statute of Ohio was attacked as being in violation of the commerce clause of the constitution which required motor transportation companies engaged in interstate commerce to obtain a certificate from the Ohio Public Utilities Commission for authority to operate within the state and to pay an annual license fee *based on the number and capacity of the vehicles used*. The provision with respect to obtaining approval from the Utilities Commission was sustained, and with respect to payment of the annual license tax, the Court said:

> "* * *. The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. Morris v. Duby, No. 372, decided April 18, 1927 (274 U. S. 135, ante, 966, 47 Sup. Ct. Rep. 548). Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use. Hendrick v. Maryland, 235 U. S. 610, 59 L. ed. 385, 35 Sup. Ct. Rep. 140; Kane v. New Jersey, 242 U. S. 160, 61 L. ed. 222, 37 Sup. Ct. Rep. 30; Hess v. Pawloski, No. 263, decided May 16, 1927 (274 U. S. 352, ante, 1091, 47 Sup. Ct. Rep. 632). Compare Packard v. Banton, 264 U. S. 140, 144, 68 L. ed. 596, 607, 44 Sup. Ct. Rep. 257.
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> "There is no suggestion that the tax discriminates against interstate commerce. Nor is it suggested that the tax is *so large* as to obstruct interstate commerce. It is said that all of the tax is not used for maintenance and repair of the highways; that some of it is used for defraying the expenses of the commission in the administration or enforcement of the act; and some for other purposes. *This, if true, is immaterial.* Since the tax is

> *assessed for a proper purpose and is not objectionable in amount,* the use to which the proceeds are put is not a matter which concerns the plaintiffs."

In *Interstate Busses Corporation v. Blodgett,* 276 U. S. 245, 72 L. Ed. 551 (1928), the tax assailed was imposed by the State of Connecticut solely on interstate carriers by motor vehicle and *was based upon the number of miles travelled within the State of Connecticut by such carriers.* It was shown that such carriers paid a property tax on their vehicles, a gasoline tax on gasoline purchased in Connecticut and an annual registration fee for the required annual registration in addition to the tax attempted to be imposed and that all the taxes were used for highway purposes. Nevertheless, the Court sustained the validity of the mileage tax repeating the established rule:

> "* * * the state may impose a reasonable charge for the use of its highways by motor vehicles so employed (in interstate commerce) * * *."

A complete review of these earlier cases and an appraisal of their holdings was made in *Sprout v. South Bend,* 277 U. S. 163, 72 L. Ed. 833 (1928). In that case, the city of South Bend, Indiana, passed an ordinance prohibiting the operation on its streets of any motor bus unless licensed by the city. Sprout, a resident of Indiana, operated a bus with seats for twelve persons in interstate commerce through the city. He refused to obtain a city license which would have cost $50.00 per year and in consequence was prosecuted and convicted for failure to have a license. The conviction was sustained in the state courts.

The contention was made that the city licensing ordinance violated the commerce clause of the Federal Constitution and the Court sustained this contention. In so doing it enumerated three instances where a state or a city, if

properly authorized, may impose a tax or form of tax on vehicles operating in interstate commerce. Such instances are:

(1) where the tax is a reasonable license fee imposed as part of a scheme of regulation under the state's police power and the licensing is appropriate to the end sought to be achieved;

(2) where the tax is an excise for use of the highways and bears a direct relation in amount to the value of use of the highways; or

(3) where the tax is an occupation tax or a tax on the right to do business and is imposed solely on intrastate business of a person doing business in interstate and intrastate commerce and where it appears that such tax is no greater because of the interstate business done, that the tax has no application to a person engaged exclusively in interstate business and that a person engaged in intrastate and interstate commerce could discontinue the intrastate business without discontinuing the interstate business.

The language of the Court, by Mr. Justice Brandeis, is important enough to require quoting *in extenso*. As to the first of the three above mentioned instances in which a state may properly impose a tax on vehicles operating in interstate commerce, the Court said:

> "It is true that, in the absence of Federal legislation covering the subject, the state may impose, even upon vehicles using the highways exclusively in interstate commerce, non-discriminatory regulations for the purpose of insuring the public safety and convenience; that licensing or registration of busses is a measure appropriate to that end; and that a license fee no larger in amount than is reasonably required to defray the expense of administering the regulations may be demanded. Hendrick v. Maryland, 235 U. S. 610, 622, 59

L. ed. 385, 390, 35 Sup. Ct. Rep. 140; Kane v. New Jersey, 242 U. S. 160, 61 L. ed. 222, 37 Sup. Ct. Rep. 30; Morris v. Duby, 274 U. S. 135, 71 L. ed. 966, 47 Sup. Ct. Rep. 548; Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, 47 Sup. Ct. Rep. 702. Compare Hess v. Pawloski, 274 U. S. 352, 71 L. ed. 1091, 47 Sup. Ct. Rep. 632. These powers may also be exercised by a city if authorized to do so by appropriate legislation. * * * Such regulations rest for their validity upon the same basis as do state inspection laws, * * * and municipal ordinances imposing on telegraph companies, though engaged in interstate commerce, a tax to defray the expense incident to the inspection of poles and wires. * * * But it does not appear that the license fee here in question was imposed as an incident of such a scheme of municipal regulation; nor that the proceeds were applied to defraying the expenses of such regulation; nor that the amount collected under the ordinance was no more than was reasonably required for such a purpose. It follows that the exaction of the license fee cannot be sustained as a police measure."

Next the Court discussed the constitutionality of an excise tax related to the use of the highways and said:

"It is true also that a state may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways. Hendrick v. Maryland, 235 U. S. 610, 622, 59 L. ed. 385, 390, 35 Sup. Ct. Rep. 140; Interstate Busses Corp. v. Blodgett, 276 U. S. 245, ante, 551, 48 Sup. Ct. Rep. 230. And this power also may be delegated in part to a municipality by appropriate legislation. * * * An exaction for that purpose may be included in a license fee. Hendrick v. Maryland, supra; Kane v. New Jersey, 242 U. S. 160, 168, 169, 61 L. ed. 222, 227, 228, 37 Sup. Ct. Rep. 30; Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, 47 Sup. Ct. Rep. 702. But no part of the license fee here in question may be assumed to

have been prescribed for that purpose. *A flat tax, substantial in amount and the same for busses plying the streets continuously in local service and for busses making, as do many interstate busses, only a single trip daily, could hardly have been designed as a measure of the cost or value of the use of the highways.* And there is no suggestion, either in the language of the ordinance or in the construction put upon it by the supreme court of Indiana, that the proceeds of the license fees are, in any part, to be applied to the construction or maintenance of the city streets." (Emphasis supplied.)

And finally the Court discussed the constitutionality of a tax on the privilege of doing business:

"It follows that on the record before us the exaction of the license fee cannot be sustained either as an inspection fee or as an excise for the use of the streets of the city. It remains to consider whether it can be sustained as an occupation tax. A state may, by appropriate legislation, require payment of an occupation tax from one engaged in both intrastate and interstate commerce. * * * And it may delegate a part of that power to a municipality. * * * But in order that the fee or tax shall be valid, it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business."

In *Interstate Transit, Inc. v. Lindsey*, 283 U. S. 183, 75 L. Ed. 953 (1931), a privilege tax was imposed by the State of Tennessee on concerns operating interstate motor busses graduated according to the carrying capacity of the vehicle and amounting to about $500 for a vehicle seating between

twenty and thirty passengers. The carrier, in this case, operated within the state exclusively in interstate commerce. This tax was levied in addition to fees for licensing and registering motor vehicles, gasoline taxes and property taxes. The proceeds of the tax were allocated to the general funds of the state while the proceeds of all other motor vehicle taxes were used for highway purposes. This tax was strikingly similar to a privilege tax levied by Tennessee on concerns operating intrastate motor buses, which latter tax was part of a comprehensive scheme to tax the carrying on of all types of businesses within the state. The tax was held invalid as amounting to a tax on the privilege of doing interstate business and not a tax as compensation for use of the highways. It was thus distinguishable from *Interstate Busses Corp. v. Blodgett* and *Clark v. Poor*, supra. In its opinion, the Court reiterated the general rules with respect to taxation by the states of vehicles operated in interstate commerce. The Court said:

> "While a state may not lay a tax on the privilege of engaging in interstate commerce (Sprout v. South Bend, 277 U. S. 163, 72 L. ed. 833, 62 A. L. R. 45, 48 S. Ct. 502), it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon (Kane v. New Jersey, 242 U. S. 160, 168, 169, 61 L. ed. 222, 227, 228, 37 S. Ct. 30; Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, 47 S. Ct. 702; Sprout v. South Bend, supra (277 U. S. 169, 170, 72 L. ed. 836, 837, 62 A. L. R. 45, 48 S. Ct. 502). As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. *This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned*

to the use (Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 72 L. ed. 551, 48 S. Ct. 230), *or by the express allocation of the proceeds of the tax to highway purposes*, as in Clark v. Poor, 274 U. S. 554,* 71 L. ed. 1199, 47 S. Ct. 702, supra, or otherwise. *Where it is shown that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory.* Hendrick v. Maryland, 235 U. S. 610, 612, 59 L. ed. 385, 35 S. Ct. 140; Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 250-252, 72 L. ed. 551, 554, 555, 48 S. Ct. 230. Compare Interstate Busses Corp. v. Holyoke Street R. Co., 273 U. S. 45, 51, 71 L. ed. 530, 534, 47 S. Ct. 298. But the mere fact that the tax falls upon one who uses the highway is not enough to give it presumptive validity." (Emphasis supplied.)

The Court then concluded from an examination of the general scheme for obtaining state revenue in Tennessee and the failure to dedicate the proceeds thereof, that the tax was one on the privilege of doing interstate business.

Following *Interstate Transit, Inc. v. Lindsey, supra*, a case arose which attempted to re-open the question settled by the *Hendrick, Kane* and *Poor* cases, namely, the constitutional authority of a state to require an operator of interstate vehicles to register his vehicles and pay an annual registration fee. *Aero Mayflower Transit Company v. Ga. Public Service Comm.*, 295 U. S. 285, 79 L. Ed. 1439 (1935). The State of Georgia required private car-

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* "The Ohio statute there involved declared that the taxes were laid, and were to be used only for, the maintenance and repair of highways and for the regulation of motor traffic. Ohio Gen. Code, §§614-94, 614-96. The 'other purposes,' referred to in the opinion, 274 U. S. at p. 557, 71 L. ed. 1200, 47 S. Ct. 702, were the general expenses of the state motor vehicle department as distinguished from expenditures specifically upon the highways."

riers for hire to register their vehicles, obtain a certificate from the Public Service Commission and pay an annual registration fee of $25.00 for each vehicle. It was held that these provisions could be applied to such a carrier operating in interstate commerce. This Court, affirming the Supreme Court of Georgia, pointed out not only that the question had long been settled but that the registration fee was moderate in amount, was used for highway maintenance and applied without discrimination to interstate and intrastate carriers. The earlier opinions in *Sprout v. South Bend* and *Interstate Transit Co. v. Lindsey, supra,* were cited as authorities for the finding.

In the case of *Dixie Ohio Express Co. v. State Revenue Commission,* 306 U. S. 72, 83 L. Ed. 495 (1939), an interstate carrier for hire was required to pay a fee graduated on a vehicle's certified chassis weight and ranging from $50.00 to $75.00. This fee was an annual one, the proceeds were used for highways and the fee was in addition to an annual registration fee of $3.00 and an annual Public Utilities Commission fee of $25.00. The validity of the fee or tax was upheld as reasonable compensation for use of the highways. The court, however, in considering the validity of the imposition, again repeated the general rules with respect to the imposition of fees or taxes upon vehicles operating in interstate commerce. The language of the Supreme Court in this case is as follows:

> "It is elementary that a State may not impose a tax on the privilege of engaging in interstate commerce. * * * But, consistently with the commerce clause, a State may impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax as compensation for the privilege of using its highways for that purpose. The applicable principle is stated in Hendrick v. Maryland, 235 U. S. 610, 59 L. ed. 385, 35 S. Ct. 140. We there said (pp. 623, 624): 'In view

> of the many decisions of this court there can be no serious doubt that where a State at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the State itself; and *so long as they are reasonable and are fixed according to some uniform, fair, and practical standard,* they constitute no burden on interstate commerce.' That rule has been applied in many cases. * * * While ordinarily state action is deemed valid unless the contrary appears, we have held that to sustain a charge by the State for the use or privilege of using its roads for interstate transportation, it must affirmatively appear that the charge is exacted as compensation or to pay the cost of policing its highways." (Emphasis supplied.)

The Court then applied these rules and considered the reasonableness of the tax. It was pointed out that the tax applied equally to intrastate and interstate vehicles, and that on the basis of data supplied by the taxpayer, the tax amounted to about 8 mills per mile. This patently modest charge, the Court said, in the absence of any other proof, indicated that the tax was fixed in accordance with a reasonable standard and did not exceed the value to the carrier of the use of the roads.

Applying the tests set forth by this Court to the statutory provisions here in issue it may readily be observed that the so-called "titling tax" imposed by Article 66½, Section 25A, meets none of them. This tax is not a license fee imposed as part of a scheme of regulation under the police power nor does it bear any relation to the value of the use of the highways in amount. On the contrary, it was this type of tax, in effect, which Justice Brandeis condemned in *Sprout v. South Bend, supra.* It can hardly be said that the

market value of a motor vehicle bears any relationship to the extent of the use thereof upon highways over which it travels. To tax an interstate motor carrier on a percentage of that market value each time title to a vehicle is transferred to the carrier is to levy a flat tax. To repeat the language of this Court in *Sprout v. South Bend, supra:*

> *"A flat tax, substantial in amount and the same for busses plying the streets continuously in local service and for busses making, as do many interstate busses, only a single trip daily, could hardly have been designed as a measure of the cost or value of the use of the highways."*

The state court, in its opinion, cites several cases to support its thesis that where the proceeds of a tax on interstate motor carriers are allocated to state highway funds, it constitutes an imposition on the privilege of using the state roads and is not a violation of the commerce clause if reasonable in amount and non-discriminatory. *Interstate Transit, Inc. v. Lindsey,* 283 U. S. 183, 186, 75 L. Ed. 953 (1931); *Morf v. Bingaman,* 298 U. S. 407, 412, 80 L. Ed. 1245 (1936); *Ingles v. Morf,* 300 U. S. 290, 294, 81 L. Ed. 653 (1937); *Aero Mayflower Transit Co. v. Board of R. R. Commissioners,* 332 U. S. 495, 505, 92 L. Ed. 99 (1947).

We have heretofore dealt with the case of *Interstate Transit, Inc. v. Lindsey, supra,* and have shown, we submit, that the case cannot support the conclusion below. It was there said:

> "* * * But since a state may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. *Being valid only if compensatory, the charge must be necessarily predi-*

cated upon the use made, or to be made, of the highways of the state. Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, 47 S. Ct. 702, supra. *In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the state. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except in so far as this is indirectly affected by carrying capacity.* The tax is proportioned solely to the earning capacity of the vehicle. *Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses."* (Emphasis supplied.)

Morf v. Bingaman, 298 U. S. 407, 80 L. Ed. 1245 (1936), involved the constitutionality of the New Mexico Caravan Act. The Court discussed at length the peculiar nature of the operation involved and its impact upon the cost of the state of maintaining the highways and policing them. The Court specifically found that the charge of $7.50 for vehicles operated under their own power, and $5.00 for vehicles being towed, was not unreasonable in view of the increased financial burden placed upon the state by such operations. The Court said, *inter alia:*

"* * * It is not shown to exceed a reasonable charge for the privilege and for defraying the cost of police regulation of the traffic involved, such as a state may impose, if non-discriminatory, on automobiles moving over its highways interstate. (Citations omitted.)

"The facts, as stipulated, established that the transportation of automobiles across the state in caravans, for the purpose of sale, is a distinct class of business, of considerable magnitude. Large numbers of such cars move over the highways in caravans or processions. Seventy-five to eighty per cent of the cars in appel-

lant's caravans are in units of two, coupled together by tow bars. Each unit is in charge of a single driver, who operates the forward car and thus controls the movement of both cars by the use of the mechanism and brakes of one. Appellant's drivers, except two or three regularly employed, are casually engaged. They usually serve without pay and bear their own expenses in order to secure transportation to the point of destination, although a few receive very small remuneration and expenses. The legislature may readily have concluded, as did the trial court, that the drivers have little interest in the business or the vehicles they drive and less regard than drivers of state licensed cars for the safety and convenience of others using the highways. The evidence supports the inference that cars thus coupled and controlled frequently skid, especially on curves, causing more than the usual wear and tear on the road; that this and other increased difficulties in the operation of the coupled cars, and the length of the caravans, increase the inconvenience and hazard to passing traffic. Car trouble to any one car sometimes results in stalling the entire caravan. The state has found it expedient to make special provisions for the inspection and policing of caravans moving in this traffic.

"There is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways, with enhanced wear and tear on the roads and augmented hazards to other traffic, which imposes on the state a heavier financial burden for highway maintenance and policing than do other types of motor car traffic. We cannot say that these circumstances do not afford an adequate basis for special licensing and taxing provisions, whose only effect, even when applied to interstate traffic, is to enable the state to police it, and to impose upon it a reasonable charge, to defray the burden of this state expense, and for the privilege of using the state highways."

Again, it is apparent from a consideration of the entire opinion of this Court, that the test applied in that case and to be applied in other similar cases (i.e. where the tax is imposed as a part of a scheme of regulation under the state's police power) is whether or not the amount of the charge is a "reasonable charge for the privilege and for defraying the cost of police regulation of the traffic involved." As will appear from the above quotation, the court specifically considered the particular nature of the operation and the increased wear and tear on the roads caused by such operation, as shown by the evidence, and the heavier financial burden for highway maintenance caused by it. The court justified the nominal tax on the ground that the evidence showed an increased financial burden on the state, and measuring the amount of the tax against this burden found that it had not been shown that the amount of the tax exceeded a reasonable charge. In other words, this Court again found that the amount of the tax bore a direct relationship to the use made or to be made of the roads, and that the evidence established a reasonable basis, measured by such use made or to be made of the roads, for the imposition of the nominal tax involved. There is no such showing in this case. It is submitted that this case is not authority for the position of the Court of Appeals.

The recent opinion of this Court in *Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U. S. 495, 92 L. Ed. 99 (1947), was cited by the state court as authority to sustain the constitutionality of the titling tax when assessed against a carrier engaged in interstate commerce. A careful consideration of the opinion in that case, however, compels a contrary conclusion. In its discussion of the facts in that case, the Court said:

> "Two distinct Montana levies are questioned. Both are imposed by that state's Motor Carriers Act, Mont.

Rev. Codes (1935) §§3847.1-3847.28. One is a flat tax of $10 for each vehicle operated by a motor carrier over the state's highways, payable on issuance of a certificate or permit, which must be secured before operations begin, and annually thereafter. §3847.16(a). The other is a quarterly fee of one-half of one per cent of the motor carrier's 'gross operating revenue,' but with a minimum annual fee of $15 per vehicle for class C carriers, in which group appellant falls. §3847.27. Each tax is declared expressly to be laid 'in consideration of the use of highways of this state' and to be 'in addition to all other licenses, fees and taxes imposed upon motor vehicles in this state.' * * *

"Appellant is a Kentucky corporation with its principal offices in Indianapolis, Indiana. Its business is exclusively interstate. It consists in transporting household goods and office furniture from points in one state to destinations in another. * * *

"In 1935 appellant received a class C permit to operate over Montant highways, as required by state law. Until 1937, apparently, it complied with Montana requirements, including the payment of registration and license plate fees for its vehicles operating in Montana and of the 5¢ per gallon tax on gasoline purchased there. However, in 1937 and thereafter appellant refused to pay the flat $10 fee imposed by §3847.16(a) and the $15 minimum 'gross revenue' tax laid by §3847.27. In consequence, after hearing on order to show cause, the appellee board in 1939 revoked the 1935 permit and brought this suit in a state court to enjoin appellant from further operations in Montana.

"Upon appellant's cross-complaint, the trial court issued an order restraining the board from enforcing the 'gross revenue' tax laid by §3847.27. But at the same time it enjoined appellant from operating in Montana until it paid the fees imposed by §3847.16(a). On appeal the state supreme court held both taxes applicable to interstate as well as intrastate motor carriers and construed the term 'gross operating revenue' in §3847.27 to mean 'gross revenue derived from opera-

tions in Montana. It then sustained both taxes as against appellant's constitutional objections, state and federal. Accordingly, it reversed the trial court's judgment insofar as the 'gross revenue' tax had been held invalid, but affirmed the decision relating to the flat $10 tax. Mont. , 172 P. 2d 452.

"We put aside at the start appellant's suggestion that the Supreme Court of Montana has misconstrued the state statutes and therefore that we should consider them, for purposes of our limited function, according to appellant's view of their literal import. The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given to state statutes by the state courts. Accordingly, we accept the state court's rulings, insofar as they are material, that the two sections apply alike to interstate and intrastate commerce and that 'gross operating revenue' as employed in §3847.27 comprehends only such revenue derived from appellant's operations within Montana, not outside that state.

"Moreover, since Montana has not demanded or sought to enforce payment by appellant of more than the flat $15 minimum fee for class C carriers under §3847.27, we limit our consideration of the so-called 'gross revenue' tax to that fee. This too is in accordance with the state supreme court's declaration. * * *

"With the issues thus narrowed, we have, in effect, two flat taxes, one for $10, the other for $15, payable annually upon each vehicle operated on Montana highways in the course of appellant's business, with each tax expressly declared to be in addition to all others and to be imposed 'in consideration of the use of the highways of this state'."

In discussing the controlling law applicable to the above facts the court specifically found, *inter alia*, as follows:

"Interstate traffic equally with intrastate may be reasonably required to pay a fair share of the cost and maintenance *reasonably related to the use made of the highways.*" (Emphasis supplied.)

(2) "Appellant, therefore confuses a tax *assessed for a proper purpose and not objectionable in amount.* Clark v. Poor, supra, (274 U. S. at 557, 71 L. ed. 1201, 47 S. Ct. 702), that is, a tax affirmatively laid for the privilege of using the state's highways with a tax not imposed on that privilege" * * *. (Emphasis ours.)

(3) "The present taxes on their face are exacted 'in consideration of the use of the highways of this state,' that is they are laid for the privilege of using those highways. *And the aggregate amount of the two taxes taken together* is less than the amount of similar taxes this Court has heretofore sustained *Cf. Dixie Ohio Co. v. Comm'n., supra; Aero Transit Co. v. Georgia Comm'n., supra.*" (Emphasis ours.)

From the facts and conclusions of law as above quoted it is manifest that the Court in the *Aero Mayflower Transit Co.* case held that the imposition on an interstate carrier of annual flat taxes aggregating but twenty-five ($25) dollars exacted "in consideration of the use of the highways" constituted no undue burden upon interstate commerce. It so held because, as the Court was careful to point out, neither the *character* nor the *amount* of the tax imposed exceeded the constitutional powers of the state to tax interstate carriers. The tax was imposed to raise revenues for highway maintenance and the amount of such tax was within that previously approved by the Court, *Dixie Ohio Co. v. Comm'n.* and *Aero Transit Co. v. Georgia Comm'n., supra.*

In the instant case, however, the amount of the flat tax on the interstate carrier involved far exceeds any such tax heretofore approved by this Court and is not computed or measured by any reasonable relationship to the use of the highways of Maryland. For instance, one of the Appellants traverses the highways of Maryland 64 miles daily,

another 41 miles daily and the third 9 miles daily but *each* would be required to pay a tax of 2% on the fair market value of every bus purchased for use over its particular route. It is difficult to conceive of a tax *less related to or measured by highway use* than one which imposes the same tax (assuming the fair market value of the vehicle to be the same in both instances) upon a carrier operating over three hundred miles daily as upon a carrier operating daily over but a fraction of such mileage.

The tax is not only utterly unrelated to highway use but is imposed with striking irregularity. It attaches when a vehicle is originally purchased or subsequently *transferred* to a new owner. If the vehicle is purchased and operated over the roads for many years, the tax is collected but once irrespective of how little or how much such vehicle is operated over the highways. Thus, in the case of five vehicles owned and operated by a particular carrier, the tax may be payable once in five years or five times in one year by reason of the replacement of worn out or obsolete equipment. The burden of the tax would hence be the greatest on the most efficient carrier which constantly replaces equipment.

It is equally difficult to conceive of any valid argument to support a contention that the fair market value of a public passenger vehicle constitutes a proper yardstick for measuring its use of the highways. Obviously a used bus of great weight and with maximum seating capacity may have a lesser fair market value at the time of registration than a new light weight bus with very limited seating capacity. Nevertheless, despite the fact that the heavier vehicle would cause more wear and tear upon the highways which it traversed, the latter would pay a greater tax. Let it be emphasized once more that, in such circumstances, the smaller vehicle would be re-

quired to pay a greater tax even though it operated over a lesser number of Maryland highway miles than the heavier used vehicle.

A careful analysis of the authorities fails to disclose any tax of the nature and amount challenged in this case which has been held valid when imposed upon an interstate carrier. The conventional taxes imposed upon interstate carriers and which have stood the test of judicial approval are those measured either by ton or passenger seat miles traversed within the particular state or where the amount thereof was so small as to be deemed *per se* reasonable as constituting a fair contribution toward (a) the cost of administering state regulations or laws enacted under its police power or (b) the cost of maintaining state highways. The tax sought to be imposed upon the carriers herein fails to fall within either category.

From all of the cases herein discussed certain rules are established by which the constitutionality of the Maryland titling tax, as applied to vehicles operated in interstate commerce, may be determined. It is admittedly well settled that the State of Maryland may impose certain taxes upon vehicles operated in interstate commerce. It may impose reasonable license fees as a part of a scheme of regulation undertaken in the exercise and administration of its police power and it may impose reasonable charges related to the use of its roads. It may not impose a tax for the mere privilege of engaging in interstate commerce.

The titling tax is obviously *not* a license fee. By its precise terms it purports to be an excise tax and its legislative history discloses that it is purely a revenue-raising measure. Legitimate license fees are imposed by the state by Section 218 of Article 81 and a charge for the issuance of a certificate of title is imposed by Section 24(e) of Article 66½.

Thus the titling tax, if it can be sustained, must be a tax to compensate the state in a reasonable sum related to the use of its roads. It is submitted that the titling tax is not such a tax.

The prior decisions of this Court unquestionably establish that taxes for highway use, except where purely nominal, must be commensurate in amount with the extent of that use. To tax otherwise is to impose an invalid burden on interstate commerce, for, in principle and effect, an excessive charge for highway use by reason of the failure to correlate highway use to the amount of tax results in exacting from interstate commerce more than its fair share of the local services employed and local protection afforded. That interstate commerce should not pay more than its own way and that a state cannot consistently impose burdens on interstate commerce by exacting more than the fair share of the cost of local facilities and local protection of such commerce has been recently repeated in *Freeman v. Hewitt*, 329 U. S. 249, 91 L. Ed. 265 (1946), and *Central Greyhound Lines v. Mealy*, 334 U. S. 653, 92 L. Ed. 1633 (1948). In the last analysis, taxes upon gross receipts not earned within the state or taxes for alleged highway charges greater in amount than the fair value of the use of highway facilities are equally offensive to the Constitution because they constitute an exaction from interstate commerce by a State of a greater amount than the value of local services, use of local facilities and local protection afforded. Both types of taxes are equally forbidden.

While the proceeds of the challenged tax are now expressly allocated to the construction and maintenance of public highways, the amount of the tax, the measure of its determination and the general characteristics thereof amply

demonstrate that the tax bears no reasonable relation to the use of the highways. It is a hybrid creature designed originally for one purpose and sought now to be validated for another, in spite of its infirmities in regard to its application to interstate carriers.

II.

ERROR OF FACT IN THE DECISION OF THE COURT OF APPEALS OF MARYLAND

We have heretofore pointed out that the state court concluded that the tax was valid because it found the same to be reasonable in amount and the proceeds therefrom devoted to highway construction and maintenance funds. We have also pointed out that the purported reasonableness of the tax was sustained by the lower court by assuming an arbitrary life expectancy of five years for the Appellants' vehicles and dividing the payment of the tax on each vehicle by said number of years, all without any evidence in the record to support the aforegoing assumption. There is nothing in the allegations in the petitions herein or the answers thereto (the latter admitting all the allegations in the petitions) from which the state court could have found *as a fact* the aforementioned life expectancy for the Appellants' vehicles. Indeed, the first suggestion of such a life expectancy was the reference thereto in the opinion of the state court.

This Court has many times stated that it will re-examine the facts of a case when the existence of a Federal right depends upon such appraisal. In the recent case of *Hooven and Allison Company v. Evatt*, 324 U. S. 652, 89 L. Ed. 1252, this Court, speaking through Justice Stone, said,

> "In all cases coming to us from a State court, we pay great deference to its determinations of fact. But when the existence of an asserted Federal right or immunity depends upon the appraisal of undisputed

facts of record, or where reference to the facts is necessary to the determination of the precise meaning of the Federal right or immunity, as applied, we are free to re-examine the facts as well as the law in order to determine for ourselves whether the asserted right or immunity is to be sustained. Kansas City Southern R. Co. v. Albers Commission Co., 223 U. S. 573, 591, 56 L. ed. 556, 565, 32 S. Ct. 316; Truax v. Corrigan, 257 U. S. 312, 325, 66 L. ed. 254, 260, 42 S. Ct. 124, 27 A. L. R. 375; First Nat. Bank v. Hartford, 273 U. S. 548, 552, 71 L. ed. 767, 770, 47 S. Ct. 462, 59 A. L. R. 1, and cases cited; Fiske v. Kansas, 274 U. S. 380, 385, 386, 71 L. ed. 1108, 1110, 1111, 47 S. Ct. 655; Norris v. Alabama, 294 U. S. 587, 589, 590, 79 L. ed. 1074, 1076, 1077, 55 S. Ct. 579."

In *Norris v. Alabama*, supra, the Court, speaking through Mr. Chief Justice Hughes held:

"That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights. Thus, whenever a conclusion of law of a state court as to a federal right and findings of fact are so intermingled that the latter control the former, it is incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured. Creswill v. Grand Lodge, K. P. 225 U. S. 246, 261, 56 L. ed. 1074, 1080, 32 S. Ct. 882; Northern P. R. Co. v. North Dakota, 236 U. S. 585, 593, 59 L. ed. 735, 740, 35 S. Ct. 429, L. R. A. 1917F, 1148, P. U. R. 1915C, 277, Ann. Cas. 1916A, 1; Ward v. Love County, 253 U. S. 17, 22, 64 L. ed. 751, 758, 40 S. Ct. 419; Davis v. Wechsler, 263 U. S. 22, 24, 68 L. ed. 143, 145, 44 S. Ct. 13; Fiske v. Kansas, 274 U. S. 380, 385, 386,

71 L. ed. 1108, 1110, 1111, 47 S. Ct. 655; Ancient Egyptian Arabic Order v. Michaux, 279 U. S. 737, 745, 73 L. ed. 931, 936, 49 S. Ct. 485."

The state court here, however, has sustained the reasonableness of the amount of the challenged tax by the patently arbitrary process of adopting assumptions as facts and without evidence in the record to even give credence to the assumptions.

We respectfully submit that even if the state court's untenable proposition that the challenged tax is valid if (i) the amount thereof is reasonable and (ii) the proceeds therefrom are devoted to highway purposes, the *reasonableness* must be determined on the basis of facts admitted by the pleadings or other evidence in the record.

Since none of the allegations in the petitions seeking the issuance of the writs of mandamus contained a single reference to the age or life expectancy of any of the vehicles of the Appellants used in their aforementioned respective operations and since all allegations in the petitions were admitted by the Appellee we submit that such age or life expectancy were not matters properly before the court, and, hence could not properly be considered by the state court in passing upon the Constitutional issue.

CONCLUSION

It is respectfully submitted that the decree appealed from should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 118

CAPITOL GREYHOUND LINES,
PENNSYLVANIA GREYHOUND LINES, INC.,
and RED STAR MOTOR COACHES, INC.,
Appellants,

vs.

ARTHUR H. BRICE,
COMMISSIONER OF MOTOR VEHICLES, STATE OF MARYLAND,
BALTIMORE, MARYLAND,
Appellee.

APPELLEE'S BRIEF

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Appellee.

APPELLEE'S BRIEF

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT IS INVOKED

These are three appeals in one record from decrees of the Court of Appeals of Maryland reversing orders of the Superior Court of Baltimore City. The latter orders directed the issuance of writs of mandamus against the Appellee, the Commissioner of Motor Vehicles of the State of Maryland, commanding him (i) to accept Appellants' applications for certificates of title for certain public passenger motor vehicles, and (ii) to issue said certificates without the payment by Appellants of a tax in the amount of 2%

of the fair market value of each of said motor vehicles, which tax is provided for in Section 25(a) of Article 66½ of the 1947 Cumulative Supplement to the Annotated Code of Public General Laws of Maryland. Appellants are engaged in carrying passengers for hire in interstate commerce by passenger motor vehicles or buses over Maryland roads. This Court's jurisdiction is invoked under U. S. C. A. Title 28, Section 1257(2) upon the alleged ground that said 2% "titling tax", adjudged by the Court of Appeals of Maryland to be payable by Appellants as a condition precedent to the issuance of certificates of title for their buses which in turn is necessary to enable said buses to operate on Maryland highways, violates the "Commerce Clause" of Article 1, Section 3 of the United States Constitution.

STATEMENT OF THE CASE

These cases arise on the demurrers of the Appellee, Commissioner of Motor Vehicles of Maryland, to three petitions for mandamus, one of which was filed by each Appellant (R. 9-24). The allegations of fact (but not conclusions) made by the petitions are therefore to be taken as true. Substantially similar facts are presented in each of the three cases.

Each of the Appellants is a corporation qualified to do business in Maryland and each is engaged in the business of public transportation of passengers for hire by motor vehicle. As a part of their business, Appellants operate over routes located both within and without the State of Maryland. Each of the Appellants is engaged in interstate commerce, having obtained authority so to operate from the Interstate Commerce Commission (R. 9, 13, 17). The interstate operations here involved may be described gen-

erally as (a) the carrying of passengers from points within the State of Maryland to points outside the State; (b) the carrying of passengers from outside the State of Maryland to points within the State; and (c) the carrying of passengers from points outside the State of Maryland to other points outside the State on fixed routes which lie partly within and partly without the State (R. 10, 14, 18).

The Appellants, Capitol Greyhound Lines (hereinafter called "Capitol") and Red Star Motor Coaches, Inc. (hereinafter called "Red Star") have authority from the Public Service Commission of Maryland to transport passengers in intrastate commerce within this State (R. 13, 14). The Appellant, Pennsylvania Greyhound Lines, Inc. (hereinafter called "Greyhound") has no such authority (R. 10).

Since November 30, 1930, Capitol has operated a passenger bus line between Cincinnati, Ohio, and Washington, D. C., a distance of approximately four hundred and ninety-six miles, nine miles of which are over State, State-aided and improved county roads of Maryland. From October 1, 1946, to September 30, 1947, Capitol carried 406,572 passengers over the above described route, of which eleven passengers traveled exclusively in intrastate commerce within this State (R. 18).

Since April 25, 1940, Greyhound, together with its wholly owned subsidiary, Pennsylvania Greyhound Lines of Virginia, Inc., has operated a passenger bus line between Philadelphia, Pennsylvania, and Norfolk, Virginia, a distance of approximately two hundred and forty-five and three-tenths miles. Greyhound operates that portion of the aforesaid route which lies between Philadelphia, Pennsylvania, and the Maryland-Virginia State line, a distance of approximately one hundred seventy-two and six-tenths miles, of

which forty-one miles are over State, State-aided and improved county roads in Maryland. Greyhound transports no passengers exclusively in intrastate commerce within the State of Maryland during this period (R. 9-10).

Since 1938, Red Star has operated a passenger bus line between Rehoboth, Delaware, and Baltimore, Maryland, a distance of approximately one hundred and twenty miles, of which sixty-four miles are over State, State-aided and improved county roads in Maryland. From June 1, 1947, to November 1, 1947, Red Star carried 13,910 passengers over the above described route, of which 6,577 passengers traveled exclusively in intrastate commerce within this State[1] (R. 13-14).

On October 22, 1947, Greyhound purchased a public passenger motor vehicle at a cost of $29,002.60 (R. 10). On July 18, 1947, Red Star purchased a public passenger motor vehicle at a cost of $18,637.50 (R. 14). On July 18, 1947, Capitol purchased a public passenger motor vehicle at a cost of $25,258.70. Each Appellant proposed to operate its said vehicle over Maryland roads in accordance with its route described above. For this operation, each Appellant was duly granted a permit by the Public Service Commis-

[1] The Appellants maintain that the ratio of their earnings from purely intrastate business developed in this State to their total interstate business was disproportionate. For example, it is alleged that Greyhound produced total gross revenues over the routes described hereinabove from interstate business in an amount equal to $436,326.92, while it had no revenue from intrastate business in this State. Similar comparisons were as follows: Red Star earned a total of $21,087.18 from passengers carried over the routes described above, of which $11,324.41 was derived from passengers traveling in interstate commerce originating from or destined for points within the State of Maryland. Capitol produced a total of $3,695.80 from passengers traveling in interstate commerce originating from or destined for points within the State and produced a total of $3.25 in purely intrastate business. The periods of time for which these comparisons were made are those outlined in the text above (R. 10, 14, 18).

on of Maryland as required by Article 81, Section 218 of ne Maryland Annotated Code (1947 Supp.) (R. 10, 14, 8-19).

Thereafter each Appellant applied to the Department of Motor Vehicles of the State of Maryland for the issuance f a certificate of title for its said motor bus. These applica-ions were made on forms provided for that purpose by the Commissioner of Motor Vehicles and accompanied by the ermit obtained from the Public Service Commission, to-ether with the sum of $1.00. The Department of Motor Vehicles, acting under the instructions of the Commissioner f Motor Vehicles, refused to accept the Appellants' appli-ations (R. 11, 15, 19-20).

The basis for the action of the Department of Motor Vehicles in rejecting the Appellants' applications for cer-ificates of title was and is that the Appellants refused and ontinue to refuse to pay the tax imposed by Section 25A f Article 66½ of the Maryland Annotated Code (1947 Supp.) which is as follows:

> "(Excise Tax for the Issuance of Certificates of Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued.
>
> "(b) The Department of Motor Vehicles shall require every applicant to supply information as it may deem necessary as to the time of purchase, the purchase price and other information relative to the determination of the fair market value.

"(c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland (1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11(e) of said Article 89B.

"(d) Certificates of title for all motor vehicles owned by the State of Maryland or any political subdivision of the State and for fire engines and other fire department emergency apparatus, including ambulance operated by or in connection with any fire department, shall be exempt from the tax imposed by this section."

This tax (hereinafter called "titling tax") applies alike to all vehicles, both local and interstate. It's payment is a prerequisite to the issuance of a certificate of title, which in turn is necessary before the vehicle may be operated upon Maryland roads. Article 66½, Sections 21 and 22, Maryland Annotated Code (1947 Supp.). These statutes are set out in full in the Appendix to this Brief.

The tax would amount to $505.17 in the case of Capitol; to $580.00 in the case of Greyhound; and to $372.75 in the case of Red Star (R. 11, 15, 20).

It is not disputed that except for the payment of the titling tax, the Appellants have complied with all of the prerequisites necessary for the issuance of the certificates of title to their motor buses.

In addition to the constitutional argument, Appellants argued below that as a matter of construction the tax in dispute does not apply to them. The Maryland Court of Appeals rejected this argument and held that the tax is in

terms applicable (R. 33-34). The question before this Court is therefore limited to the constitutionality of the tax under the Commerce Clause. *Aero Mayflower Transit Co. v. Board of R. R. Commissioners*, 332 U. S. 495, 92 L. Ed. 99 (1947).

ARGUMENT

A.

General Statement of the Appellee's Position.

Article 1, Section 8, Clause 3 of the Federal Constitution (hereinafter referred to as the "Commerce Clause"), gives to the Congress of the United States the power "to regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes". In the present case, the Appellants contend that the Maryland titling tax, as applied to them, violates the commerce clause and is therefore invalid. The highest court of Maryland held otherwise (R. 24-35).

In determining the important constitutional question raised by this case, we respectfully urge this Court not to be misled by catch-word phrases or convenient labels. The time has long passed since constitutional questions were decided upon the basis of form. This case, we submit, must and should be decided with due regard to the substance of the matter at hand.[2]

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[2] Nomenclature has been rejected as the touchstone for decision in the great majority of cases dealing with the application of the commerce clause to taxes levied against interstate motor bus operators. An excellent example of this approach may be found in *State v. Oligney*, 162 Minn. 302; 202 N. W. 893 (1925), where the court, in sustaining a flat tax levied against interstate motor operators, said at page 307:

> "Whether we call the tax a property tax or a privilege tax, or both, is of no great consequence so far as this case is concerned. The tax cannot be escaped merely because defendant is a non-resident or because he uses his truck to transport goods in interstate commerce."

It is for this reason that we ask this Court at the very outset of our argument to put to one side the question of whether the impost laid by the Maryland titling tax can be classified as a tax, a fee or a license.[3] It matters not, we submit, what name or label is attached to the Maryland titling tax for in any event the substance of the situation is the same. This Court will readily see that the true substance in this case lies in the fact that an economic burden by way of a revenue raising measure has been laid upon an interstate carrier. The question for decision is, therefore, whether there is any governing principle by which the impact of that economic burden can be sustained consistent with the requirements of the commerce clause of the Federal Constitution.

We submit that the underlying and governing constitutional principles which control this case are as follows: (1) if a reasonable and non-discriminatory tax is affirmatively laid on motor vehicles engaged in interstate commerce for the privilege of using the State's highways, the tax is consistent with the requirements of the commerce clause and, therefore, constitutional; (2) if a tax is affirmatively laid on motor vehicles engaged in interstate commerce for the privilege of doing interstate business, the

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[3] Appellants have attempted to distinguish such cases as *Hendrick v. Maryland*, 235 U. S. 610, 59 L. Ed. 385 (1915) and *Morf v. Bingaman*, 298 U. S. 407, 80 L. Ed. 1245 (1936) from the present case on the grounds that the imposts with which the Supreme Court was concerned in those cases were mere "fees", while in the present case the Court was confronted with a "tax" or "revenue raising measure". In this connection, we call this Court's attention to the fact that the Supreme Court saw no basis for such a distinction in the recent case of *Acro Mayflower Transit Co. v. Board of Railroad Commissioners*, 332 U. S. 495, 92 L. Ed. 99 (1947), since both the *Hendrick* case and the *Morf* case were cited to sustain the constitutionality of the Montana gross revenue tax involved in that proceeding.

tax violates the provisions of the commerce clause and is, therefore, unconstitutional.

In the pages that follow, we will apply the basic principles set forth above to the facts in the present case. More particularly, our argument will be predicated upon the following premises which, we submit, are irrefutable:

(1) That a reasonable and non-discriminatory tax which is levied against motor vehicles engaged in interstate commerce is constitutional if it is laid *for the privilege of using the State's roads*. A tax is laid for the privilege of using the State's roads if *any one* of the following is present:

(a) the tax is actually allocated to road maintenance and construction; or,

(b) the Legislature has declared specifically that the tax is laid for the privilege of using the roads of the State; or,

(c) assuming that neither of the first two tests are met, if it appears from the relationship of the tax to the use of the roads that the tax is truly one on the privilege of using the roads.

(2) That the Maryland titling tax is levied for the privilege of using the roads because its proceeds are expressly and specifically allocated by statute to road construction and maintenance.

(3) That since the true nature of the Maryland titling tax is thus spelled out for all to read, it is immaterial whether or not the Legislature has said in so many words that the tax is for the privilege of road use. It is also immaterial that there is no precise measurable tie-in or relationship of the exaction and amount of the tax with the man-

ner or extent of the actual use of the roads by the particular taxpayer.

(4) That the Maryland titling tax is non-discriminatory and is reasonable in amount for the privilege of using the roads to such extent as the taxpayer may desire and be in a position to do.

Since the tax, under the decisions of this Court to which we will refer, is a tax on the privilege of using the roads because its proceeds are specifically dedicated to road maintenance and construction, the only remaining relevant inquiry is whether or not the tax is non-discriminatory and reasonable in amount. By reasonable in amount is meant (and the cases clearly so hold) not that the tax must be an exact or measurable quid pro quo for the actual mileage used by the taxpayer, but merely that the tax is not exorbitant or fantastic in amount for the privilege of using the roads as extensively as the taxpayer may desire. In other words, if there has been established, as is true in this case, that the tax is for the privilege of using the roads, the tax in order to be unreasonable in the legal sense would have to be, in effect, confiscatory.

Because the Appellants will attempt to refute the argument made above, mainly by projecting old and inapplicable cases wherein the tax was held to be on interstate commerce and not on the privilege of using the roads, it becomes necessary to analyze in detail many of the decisions of this Court which have dealt with the problem.

B.

The Maryland Titling Tax is Allocated to the Construction and Maintenance of the State Highways.

As stated in the first part of our brief, the Maryland titling tax is constitutional if it appears affirmatively that

the tax is laid on the privilege of using the State's highways and if the tax is reasonable in amount and non-discriminatory against interstate commerce. The first question for decision is, therefore, whether the tax is laid affirmatively upon the privilege of using the State highways. As will appear by the next section of our brief, we contend that the titling tax is laid upon the privilege of using the State highways because the proceeds of the levy are allocated for the use and maintenance of the State roads.

In order that this Court may see clearly the method by which the proceeds of the titling tax are allocated, a brief summary of the various provisions of the Annotated Code of Maryland bearing upon this question is in order.[4]

Section 218 of Article 81 of the Annotated Code of Maryland (1947 Supp.) provides that it shall be the duty of each owner of a motor vehicle used in the interstate transportation of passengers over State roads to secure permission so to operate from the Public Service Commission of Maryland. This Section further provides that the owner of such motor vehicle must present the permit received

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[4] The history of the titling tax is faithfully recited in the nisi prius court's opinion. In this connection, it is observed, in part (R. 2):

"The titling tax was first levied in Maryland in 1935 at the rate of one per cent. and the proceeds were paid into a special account in the State Treasury called the 'State Emergency Relief Fund'. Later the Act was amended to provide that the proceeds be paid into the 'State Fund for Aid to the Needy'. In 1939 the levy was increased to two per cent. and the proceeds were paid into the general funds of the State.

Chapter 560 of the Acts of 1947 made several important changes in the law. The tax was made applicable not only to original title certificates but to subsequent transfers. The proceeds were to be used for servicing the debt on State highway construction bonds, and the balance, if any, went to the construction fund of the State Roads Commission."

See also Court of Appeals' Opinion (R. 29).

from the Public Service Commission to the Commissioner of Motor Vehicles at the time and according to the methods prescribed by law for the making of application for registration tags.

Section 21 of Article 66½ of the Annotated Code of Maryland (1947 Supp.) provides, with certain exceptions not here material, that "*every motor vehicle*, trailer, and semi-trailer when driven or moved upon a highway shall be subject to the registration and *certificate of title provisions of this Article.*"

Section 22 of Article 66½ of the Annotated Code of Maryland (1947 Supp.) provides that "*every owner of a vehicle subject to registration hereunder* shall make application to the Department for the registration thereof and the *issuance of a certificate of title for such vehicle* upon the appropriate form or forms furnished by the Department". The Section further provides that the application shall bear the acknowledged signature of the owner written with pen and ink and shall contain certain additional information which is not material to this proceeding.

Section 25 of Article 66½ of the Annotated Code of Maryland (1947 Supp.) provides that upon registering a vehicle the Department of Motor Vehicles shall issue a registration card and a certificate of title after it has received, among other things, a registration fee of $1.00.

Section 25A of Article 66½ of the Annotated Code of Maryland (1947 Supp.) provides, as follows:

> "In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles

in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued."

Sub-section (c) of Section 25A of Article 66½ of the Annotated Code of Maryland (1947 Supp.) provides that the Department of Motor Vehicles shall remit all sums collected under the titling tax to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State highway construction bonds, pursuant to Sections 147G to 147P of Article 89B of the Annotated Code of Maryland (1947 Supp.). The sub-section further provides that the balance of the proceeds of the titling tax, if any, shall be allocated to the Construction Fund of the State Roads Commission, as provided by Section 11C of Article 89B.

Sections 147 G to 147 P of Article 89B of the Annotated Code of Maryland (1947 Supp.) provide for the general road construction program of this State which was inaugurated at the regular session of the General Assembly held in 1947.[5] Elaborate provisions for the issuance of State

[5] The transfer of the titling tax proceeds from General Funds to State Roads Funds was a part of the overall roads program recommended to the General Assembly in 1947 by the Governor. In this connection, the Governor stated, in part, in his Message on the Additional Revenue Requirements (See 1 House Journal (1947) p. 1235, at 1236; Senate Journal (1947) p. 973, 974):

"First of all, I propose that the 2% titling tax, which will average approximately $2,625,000 annually, be transferred from General Funds to State Road Commission Funds. There is widespread feeling that since this money is collected from the motorist, it should be used for road purposes. It is therefore a logical source for additional road funds. This proposal will necessitate, of course, additional taxation in the amount of $2,625,000 annually for general fund purposes."

road construction bonds are contained in these Sections. Moreover, the Sections provide for the method by which these bonds should be serviced. In general, this method includes the allocation of the proceeds of (1) the titling tax levied pursuant to the provisions of Section 25A of Article 66½, *supra*, and, (2), such amounts as may be necessary from the gasoline tax fund. In this respect, Section 147N of Article 89B, *supra*, provides as follows:

> "Until all of the bonds issued under the provisions of this sub-title shall be paid, the proceeds of the annual tax laid by this Section shall be set aside as received to the credit of a sinking fund for the payment of the principal of and the interest on such bonds until the amount held for the credit of said sinking fund shall be equal to the amount required for the payment of the principal of and the interest on the bonds then outstanding which will become payable in the current year and in the next succeeding fiscal year. The proceeds of the taxes laid under the provisions of this section are hereby irrevocably pledged to the payment of the principal of and the interest on such bonds as the same shall become due and payable and such taxes, to the extent hereby required, shall not be repealed, diminished or applied to any other object until such bonds shall be fully paid."

It thus appears, as the Maryland Courts found (R. 3, 29), that the proceeds of the titling tax are allocated directly to the construction and maintenance of the roads of this State. Indeed, we do not understand the Appellants to contradict this assertion. The question which naturally arises, therefore, is what legal effect this fact has on the case at bar. This matter is treated in the following section of our brief.

C.

A Tax on Interstate Motor Carriers Allocated to State Highway Funds Is An Imposition on the Privilege of Using the State Roads.

As stated in the first section of our brief, the substantive question here presented is whether the titling tax is imposed upon the privilege of using State roads. If this Court finds (as the Court of Appeals of Maryland found, R. 29) that the incidence of the tax here in question is based upon the privilege of using the State roads, then, we submit, the levy must be held to be constitutional if it is found to be reasonable in amount and non-discriminatory against interstate commerce.

The question arises, therefore, how can it be shown that a tax imposed upon motor vehicles operating in interstate commerce is levied for the privilege of using the State roads. This may be proved by showing the existence of *any one* of the following situations:

(1) That the proceeds of the levy are allocated to the construction or maintenance of the State roads, or

(2) that the Legislature has made a formal statement to the effect that the tax is levied in consideration of the use of the State's highways,[6] or

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[6] Though there is no such express legislative statement here, the highest Court of Maryland held that the tax is for the privilege of using State roads (R. 29). It therefore appears that the effect of such formal statement has been supplied by the Maryland Court's construction of a Maryland statute, which in turn is binding on this Court. *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80, 92 L. Ed. 1832 (1948); *Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U. S. 495, 92 L. Ed. 99 (1947). If so, our argument need go no further than to show that the tax is reasonable and non-discriminatory.

(3) from considering the tax in its entirety and determining whether the levy bears a reasonable relationship to the use of the State roads.

We have demonstrated heretofore that the proceeds of the Maryland titling tax are allocated to the construction and maintenance of the roads of this State. We have advanced the argument in this part of our brief that a tax will be considered as levied upon the privilege of using the State roads if the proceeds of that levy are allocated to road funds. The cases discussed below conclusively sustain the accuracy of this last statement.

In the recent case of *Aero Mayflower Transit Co. v. Board of Railroad Commissioners*, 332 U. S. 495, 92 L. Ed. 99 (1947), this Court had before it two flat taxes imposed under the laws of Montana. It was expressly held that the taxes there levied were imposed upon the privilege of using the State roads since the Montana Legislature had stated in the preamble of taxing measures that they were laid "in consideration of the use of the highways of this State." In reaching its conclusion, however, the opinion stated that if doubt existed on the question whether the taxes were levied upon the privilege of using the State roads, recourse could have been had to the purposes for which such taxes were put. In this connection, it was said at page 505:

> "Whether the proceeds of a tax are used or required to be used for highway maintenance 'may be of significance', as the Court has said, 'when the point is otherwise in doubt, to show that the fee is in fact laid for that purpose and is thus a charge for the privilege of using the highways'."

In making the statement quoted above, this Court was merely reiterating a rule which had been well established for many years. For example, in *Ingels v. Morf*, 300 U. S. 290, 81 L. Ed. 653 (1937), the Court held that the California

"caravan" act was invalid. In reaching this result, the Court was careful to point out that the tax was not imposed for the privilege of using the State roads. In this connection, the Court said at page 294:

> "To justify the exaction by a State of money payments burdening interstate commerce, it must affirmatively appear that it is demanded as reimbursement for the expenses of providing facilities or of enforcing regulations of the commerce which are within its constitutional power (citations omitted). This may appear from the statute itself (citations omitted), *or from the use of the money collected, to defray such expenses.*" (Italics supplied.)

That an allocation of the proceeds of a tax levied against interstate motor carriers to highways funds would be conclusive of the fact that the tax was levied for the privilege of using the State roads is made apparent by the decision of *Morf v. Bingaman*, 298 U. S. 407, 80 L. Ed. 1245 (1936). In that case, this Court sustained the constitutionality of the New Mexico Caravan Act against the contention that the tax violated the commerce clause of the Federal Constitution. In deciding that the tax there involved was imposed for the privilege of using the highways of the State, the Court said at page 412:

> "The use for highway maintenance of a fee collected from automobile owners may be of significance, when the point is otherwise in doubt, to show that the fee is in fact laid for that purpose *and is thus a charge for the privilege of using the highways of the State.*" (Italics supplied.)

In *Interstate Transit, Inc. v. Lindsey*, 283 U. S. 183, 75 L. Ed. 953 (1931), the Supreme Court declared unconstitutional a Tennessee act which imposed a privilege tax graduated according to the carrying capacity of motor vehicles operating in interstate commerce. In that case, the Court

could find no evidence of the fact that the tax was levied for the privilege of using the highways of the State and, therefore, expressly held that the tax was imposed against the forbidden purpose, i.e., the privilege of doing interstate business. In enunciating the various tests which should be considered in determining whether a tax was laid for the privilege of using the highways of the State, the Supreme Court said at page 186:

> "As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears, affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expenses of regulating motor traffic. *This may be indicated* by the nature of the imposition, such as mileage tax directly in proportion to use (citation omitted) or *by the express allocation of the proceeds of the tax to highway purposes* * * *." (Italics supplied.)

It thus appears that the Supreme Court in an unbroken line of decisions has declared expressly that the allocation of a motor vehicle tax to highway funds will conclusively answer the question of whether that tax is imposed for the privilege of using State highways. We have found no case and we submit that no case has been decided which in anyway refutes this principle. Moreover, the Governor of Maryland, in explaining to the General Assembly the reason for allocating the proceeds of the titling tax to State roads funds, declared that the step was taken in order "to meet the requirements of the highway situation" and to alleviate "one of the most inadequate highway systems in the country".[7] Since the proceeds of the Maryland titling

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[7] In his Message to the General Assembly on the State Highway System, delivered March 6, 1947, the Governor said, in part, (1 House Journal (1947) p. 1681, 1682):

"After intensive studies which have been made by and for me for more than a year, starting shortly after I announced my candi-

tax are expressly allocated to road construction and maintenance, it must follow that the tax in question is, in legal theory, expressly levied for the privilege of using the highways of this State.

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dacy for the office of Governor, I am convinced that, in order to meet the requirements of the highway situation, it is necessary to provide for additional projects to be financed, exclusively by tolls, to increase the present gasoline taxes from four to five cents per gallon, to make the increases in license fees substantially as provided in Senate Bill No. 104, to allocate all motor vehicle titling tax fees, now part of the general funds of the State, to the State Roads Commission for construction purposes, and to provide for the support of the State Police Department out of the State's general funds, instead of revenues from the operation of motor vehicles, as at present. * * *

"There was a time when Maryland boasted one of the best highway systems in the country. That was about thirty years ago. Since then the vast increase in motor vehicle traffic, and the improvement and changes in the speed, size and efficiency of commercial vehicles have so greatly altered the character of the highways required to carry passengers and freight that the design and even the materials used comparatively recently have now become obsolete. We are compelled to admit that Maryland has failed to meet present-day highway requirements. Its roads, except in a few instances, are too narrow for safety; the routes are winding, and therefore time-consuming, and various classes of traffic are lumped together, so that many roads are overloaded and incapable of properly servicing the traffic that is part and parcel of life in America today. From having one of the best highway systems, we have fallen back until today we have, I regret to say, one of the most inadequate highway systems. * * *

"* * * *Among other things I have tried to do is to frame the new legislation so as to assure all highway users that the revenues charged them for using the highways shall be dedicated and used for highway purposes, and for no other purposes.* It is for that reason that I propose to finance the State Police Department out of general revenues, and to lift the burden of this cost from highway funds." (Italics supplied.)

D.

A Reasonable and Non-discriminatory Tax Imposed Upon the Privilege of Using the State Roads is Constitutional Regardless of Whether the Amount of the Tax has any Specific Relationship to the Extent of Road Use.

In the preceding sections of this brief, we have shown that the Maryland titling tax is levied as compensation for and upon the privilege of using the highways of this State.

The question next presented is, therefore, assuming that the tax is levied upon the privilege of using the State highways, must it be shown, in addition, that the tax is geared to or has a relationship to road use before the constitutionality of the levy can be sustained?

The Superior Court of Baltimore City (the nisi prius court in this case) thought and acted upon the premise that since the tax was levied upon motor vehicles engaged in interstate commerce its amount must bear some measurable relationship to actual use of the roads by the taxpayer. Finding that the Maryland titling tax was a flat levy and not geared or proportioned with exactness to any phase of road use, the Superior Court held it to be unconstitutional (R. 1-8). This holding completely overlooked the basic and controlling fact that if the tax is one on the privilege of using the roads, as this Court has said it is if its proceeds are allocated to road construction and maintenance, the only inquiry is whether or not the tax is nondiscriminatory and reasonable in amount. If the tax is a privilege tax on road use (and there can be no doubt that the Maryland tax is since its proceeds are specifically allocated to road use), the only inquiry which need be made as to reasonableness is whether or not the tax is exorbitant, fantastic or confiscatory. It need not be a measurable or

exact quid pro quo for the manner and extent of actual road use.

We submit that the Superior Court's reasoning and result are entirely refuted by many decisions of this Court and are entirely fallacious, since they are based on a premise which is fundamentally unsound and overlooks the true nature of the tax here involved.

We further submit that the proper rule, which has been developed by all of the decisions of this Court, and was followed by the highest Court of Maryland (R. 24-33), is that a tax levied against motor vehicles engaged in interstate commerce *for the privilege of using the State roads* is valid and constitutional if that tax is reasonable in amount and non-discriminatory against interstate commerce. Put differently, we maintain that if a tax is imposed against an interstate motor bus carrier for the privilege of using the State roads, that tax, to be constitutional, need bear no specific relationship to road use. In such cases, the only test is whether the tax is reasonable in amount and non-discriminatory against interstate commerce.

A case directly in point with the theory which we have enunciated above is *Aero Mayflower Transit Co. v. Board of Railroad Commissioners*, 332 U. S. 495, 92 L. Ed. 99 (1947). As already stated it appeared in that case that the State of Montana levied in effect against interstate motor carriers two flat, non-discriminatory taxes, one for $10.00, the other for $15.00, payable annually upon each vehicle operated on Montana highways. Each tax was declared expressly to be laid "in consideration of the use of the highways" of the State, but the proceeds of the levies were allocated to the State's general fund. The taxpayer, a nonresident corporation whose business was exclusively inter-

state, challenged the legislation upon the theory that the taxes were imposed upon the business of doing interstate commerce.

In its decision, the Supreme Court pointed out that there were two types of revenue measures which could be laid against interstate motor vehicles. On the one hand, the Court observed, there were taxes imposed upon the privilege of doing interstate business. This type of tax, the Court said, was invalid. The second type of tax mentioned by the Court was one affirmatively laid for the privilege of using the State highways. In discussing the constitutionality of such taxes, the Court said at page 503:

> "It is far too late to question that a state, consistently with the commerce clause, may lay upon motor vehicles engaged exclusively in interstate commerce, or upon those who own and so operate them, a fair and reasonable, non-discriminatory tax as compensation for the use of its highways."

The Court held specifically that the taxes in the *Aero Mayflower Transit Company* case were levied for the privilege of using the highways of the State. This result was reached since, as stated above, the State Legislature had manifested an intent to levy the taxes "in consideration of the use of the highways". Having found that the taxes were laid on a privilege permitted under the commerce clause (i.e., the privilege of using the State highways) the Court then turned its attention to whether the taxes were reasonable and non-discriminatory against interstate commerce. Finding that the levies were reasonable and non-discriminatory, the Supreme Court held them to be constitutional.

It thus appears that the *Aero Mayflower Transit Co.* case presents direct authority for sustaining the constitutionality of the Maryland titling tax. In the *Aero Mayflower*

Transit Co. case, the Supreme Court found that the Montana flat taxes were levied for the privilege of using the highways of the State. Similarly, since the proceeds of the Maryland titling tax are allocated to State highway purposes, it must follow that that tax, like the Montana levies, is imposed for the privilege of using the highways of the State.

In the *Aero Mayflower Transit Co.* case, the Supreme Court sustained two flat taxes imposed against interstate motor vehicle operations—taxes which were not geared to the actual use of the highways nor related to any indicia of that use. As pointed out above, the taxes in the reported case were sustained because they were laid for a proper purpose, i.e., the privilege of using the highways of the State and because they were neither unreasonable nor discriminatory.

In the case at bar, this Court has before it a flat tax which is levied on the privilege of using the highways of this State. We submit that this Court should find the Maryland titling tax constitutional if it determines that it is reasonable in amount and non-discriminatory against interstate commerce. We further maintain that in reaching this decision this Court should hold (as did the Supreme Court in the *Aero Mayflower Transit Co.* case) that the fact that the amount of the Maryland titling tax has no relationship to the extent of the use of the State roads is completely immaterial.

Morf v. Bingaman, 298 U. S. 407, 80 L. Ed. 1245 (1936), illustrates the rule that a tax which is laid for the privilege of using the highways of the State will be sustained if the amount of the tax is reasonable and if the levy is non-discriminatory, it being immaterial that such taxes have no direct relationship to the use of the State roads. In the reported case, it appeared that by Chapter 56 of the New

Mexico Session Laws of 1935, the State denied to all persons the use of its highways for transportation of any motor vehicle on its own wheels for the purpose of selling or offering such vehicle for sale unless the vehicle was (1) licensed by the State, or (2) owned by a licensed automobile dealer and operated under a dealer's license, or (3) operated under a special permit issued by the State. The statute further provided that the permit for such operations would cost $7.50 if the vehicle was transported by its own power and $5.00 if the vehicle was towed or drawn by another.

As explained in the preceding section of our brief, the Supreme Court, in *Morf v. Bingaman, supra*, expressly decided that the tax in question was levied for the privilege of using the State roads since a portion of the fees collected were devoted directly to highway maintenance. Having concluded that the tax was laid for a proper purpose, i.e., the privilege of using the highways of the State, the Court concluded that the exaction would be sustained if it could be found that it was fair and reasonable in amount and nondiscriminatory. In this connection, the Court said at page 412:

> "As the tax is not on the use of the highways but on the privilege of using them, without specific limitation as to mileage, *the levy of a flat fee not shown to be unreasonable in amount, rather than a fee based on mileage, is not a forbidden burden on interstate commerce.*" (Italics supplied.)

It thus appears that in *Morf v. Bingaman, supra*, the Supreme Court sustained a flat tax levied against interstate motor vehicles regardless of the fact that the amount of the tax was unrelated to the extent of road use. This result was reached because the tax was found to be imposed upon a proper purpose consistent with the commerce clause, i.e. the privilege of using the State roads, and because the

tax was reasonable in amount and non-discriminatory. We submit that in the present case this Court should find that the Maryland titling tax is imposed upon the privilege of using the State roads and that it should, therefore, declare the tax to be constitutional regardless of the fact that the levy is not geared to the extent of use of the roads.

Dixie Ohio Express Co. v. Commission, 306 U. S. 72, 83 L. Ed. 495 (1939), illustrates the rule that a fair and non-discriminatory tax laid against interstate motor vehicle operators will be sustained if that tax is levied for the privilege of using State roads. In the cited case, it appeared that an Ohio corporation, which engaged exclusively in interstate transportation as a common carrier of property for hire by motor vehicles, held a certificate of convenience and necessity issued by the Interstate Commerce Commission, authorizing it to carry goods through Georgia. It further appeared that the Georgia maintenance tax imposed a levy on all carriers at rates which varied according to the type and weight of the vehicles used. By a specific act of the Legislature, the proceeds of the tax were allocated to the United States rural post roads in Georgia which the opinion makes it clear, were roads over which the taxpayer did not travel at all.

In a suit to test the validity of the Georgia maintenance tax, the taxpayer contended that the levy was an unreasonable and unconstitutional burden upon interstate commerce. The Supreme Court, however, sustained the tax. In so doing, the Court first turned its attention to whether the tax in question was laid (1) upon the privilege of engaging in interstate commerce, or (2) upon the privilege of using the State roads. Having expressly held that the tax in question was levied upon the privilege of using the highways of the State, the Supreme Court held that the levy would be constitutional if it were found to be reason-

able in amount and non-discriminatory. Said the Court at page 76:

> "But, consistently with the commerce clause, a State may impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax as compensation for the privilege of using its highways for that purpose."

In the *Dixie Ohio Express Co.* case (as in the other cases cited and discussed hereinabove) this Court sustained a levy imposed expressly upon the privilege of using the highways of the State because it found that tax to be reasonable in amount and non-discriminatory against interstate commerce. In none of the cases discussed above, did the Court state that such taxes would be sustained only if they had some direct or proportionate relationship to the use of the State roads. Moreover, we most earnestly submit that the Supreme Court has never held that a tax imposed for a proper purpose, i. e. for the privilege of using the State's roads, must be geared to or have some measurable proportion to road use. To the exact contrary, this Court has expressly held, in an unbroken line of decisions, that there is only one test to be used in determining the constitutionality of a tax imposed for the privilege of using State roads; namely, whether that tax is reasonable in amount and non-discriminatory against interstate commerce.[8]

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[8] Other cases, not discussed in full in the text above, have sustained taxes imposed for the privilege of using the State's highways if those taxes were reasonable in amount and non-discriminatory against interstate commerce. The genesis of all of these cases is *Hendrick v. Maryland*, 235 U. S. 610, 59 L. Ed. 385 (1915). In that case, the appellant had been convicted before a Justice of the Peace of Prince Georges County for violating Chapter 207 of the Acts of 1910. Chapter 207, *supra*, provided, in part, that every motor vehicle operated in this State should have a certificate issued by the Commissioner of Motor Vehicles. To obtain this certificate, it was necessary to register the car in question, registration fees being fixed according to horsepower.

Appellants argue that the Maryland titling tax is invalid because its impact bares no measurable relationship

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i.e., $6.00 for twenty or less, $12.00 for twenty to forty and $18.00 in excess of forty. All monies collected under the provisions of the Act, with certain minor exceptions, were to be paid to the State Treasury to be used in the construction, maintenance and repair of the streets of Baltimore and roads built by the counties and the State.

The appellant was a resident of the District of Columbia and was, therefore, subject to the taxes imposed by Chapter 207, *supra*, if and when he used the highways of this State. On July 27, 1910, the appellant drove his car into Prince Georges County and while temporarily there was arrested on the charge of operating it upon a State highway without having procured the certificate of registration required by Chapter 207, *supra*. Before the Supreme Court, the appellant argued that the Maryland tax attempted to regulate interstate commerce, was arbitrary and confiscatory and was, therefore, unconstitutional.

The Supreme Court rejected the appellant's contention. In reaching its conclusion, the Court said at pages 623-624:

> "In view of the many decisions of this court there can be no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the state itself; and so long as they are reasonable and are fixed according to some uniform, fair, and practical standard, they constitute no burden on interstate commerce."

The *Hendrick* case, *supra*, was reaffirmed a year later by the decision in *Kane v. New Jersey*, 242 U. S. 160, 61 L. Ed. 222 (1916). In *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 83 L. Ed. 1001 (1939), the Supreme Court sustained a license tax imposed upon the privilege of transporting any vehicle through the State of California for the purpose of sale. The greater portion of the Court's opinion dealt with whether the contested act unlawfully discriminated against the vehicles owned by the taxpayer. In reaching its ultimate conclusion, however, the Court took occasion to point out that a State could levy a tax for the privilege of using the roads and that such a tax would be sustained if it were reasonable in amount. On this point, the Court said at page 598:

> "As the State has authority to charge a reasonable fee for the use of its highways, and as a classification of the traffic which the State has made for the purpose of fixing the fee is valid, the only remaining question is whether the fees which it has fixed must be deemed excessive."

See also *Clark v. Poor*, 274 U. S. 554, 71 L. Ed. 1199 (1927).

to the use of the State roads. For this proposition they rely principally upon *Interstate Transit, Inc. v. Lindsey*, 283 U. S. 183, 75 L. Ed. 953 (1931) and *Sprout v. South Bend*, 277 U. S. 163, 72 L. Ed. 833 (1928). We submit that neither of these cases sustains Appellants' proposition because in both there was entirely absent any allocation of proceeds for road use or any legislative declaration that the taxes were imposed for the privilege of using the State's roads. Thus, in each case, in testing validity by determining whether the tax was imposed on the privilege of using the roads or on interstate commerce as such, the court was obliged to determine whether the tax bore a "reasonable" relationship to road use. The only reason or necessity for inquiry into relationship to road use was the fact that there was no direct allocation of proceeds to the roads and no legislative declaration of imposition of a tax for the privilege of using the roads.

The tax before the Court in the *Interstate Transit* case, *supra*, was a privilege levy graduated according to carrying capacity, being a part of the Tennessee general revenue bill of 1927, which dealt with practically all taxes laid by the State except those relating to highways. The controverted measure was grouped under that portion of the general revenue bill which stated that each vocation, occupation and business named thereunder was declared to be a privilege and that for exercising that privilege a tax should be fixed and paid.

In approaching the problem, the Supreme Court reasoned that the tax in question was an exaction laid for the privilege of engaging in a specific type of business. This conclusion was reached not only because of the heading under which the Legislature had grouped the tax, but also because all of the taxes under that heading were

gauged to probable earning power. Moreover, the Court emphasized the fact that the proceeds of the tax were allocated to the general funds of the State. The Court concluded that the type of business upon which the tax was laid was the privilege of engaging in interstate commerce and that, as a result, the measure was unconstitutional.

It thus appears that the basic and underlying question before the Supreme Court in the *Interstate Transit, Inc.* case, *supra*, was whether the tax in question was imposed for the privilege of engaging in interstate commerce or was laid upon the privilege of using the State roads. In resolving the question of whether the tax was imposed for the privilege of using the State roads, the Court applied three tests, i.e. (1) whether the proceeds of the tax were allocated to road purposes (the Court found that they were not); (2) whether the Legislature had expressly declared the tax to be imposed for the use of the roads (the Court found that the Legislature had made no such declaration); and (3) whether the nature of the imposition indicated that it was imposed for the use of the State roads. And, *it was for the sole purpose of applying this last test* that the Court observed that the tax under consideration bore no relationship to the use of the State roads and was, therefore, unconstitutional. At 283 U. S. 188-189 and 75 L. Ed. 970-971, the Court said:

> "The conclusion that the tax challenged is laid for the privilege of doing business and not as compensation for the use of the highways is confirmed by contrasting Section 4 of the 1927 Act with those statutes which admittedly provide for defraying the cost of constructing and maintaining highways and regulating traffic thereon. * * *
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> "* * * In these statutes and in many later ones—prescribing additional fees for the registration and licensing of motor vehicles, imposing gasoline taxes,

laying a 1-mill road tax, and authorizing the issue of bonds for the construction of highways and bridges,—the legislature provided that the proceeds of the fees, taxes, and bonds, and of the tolls collected on bridges, should be set apart as state highway and bridge funds to be expended by the Commission exclusively for the construction and maintenance of highways or bridges. The absence in Section 4 of this provision, which characterizes almost every other Tennessee statute relating to the construction and maintenance of highways, or the regulation of motor vehicle traffic, is additional evidence that the present tax was not exacted for such purposes, but merely as a privilege tax on the carrying on of interstate business."

The conclusion is inescapable, therefore, that the statements of this Court relating to the relationship of a tax imposed upon interstate motor vehicles to the use of the roads *concerned only the question of whether that tax was imposed for the privilege of using the roads.* It must follow, therefore, that if the question of whether the tax was imposed for the privilege of using the State roads had been answered in the affirmative for some other reason (as for example by the allocation of the tax proceeds to road funds), this Court would have had no occasion to make the general statements relied upon by Appellants.

If the argument which we have made here is sound, we would expect this Court to disregard all of the factors implicit in the *Interstate Transit, Inc.*, case, *supra*, which dealt with the relationship of the tax to the use of State roads, if the proceeds of the tax in question were allocated directly to roads funds. As explained above, a consideration of the relationship of road use to the amount of the tax would become irrelevant in such a case, because the very thing that those considerations were used to disprove, i.e. that the tax was not laid for the privilege of using the

highways of the State, would have already been establish[illegible] to the contrary by the allocation of the tax proceeds t[illegible] State highway funds."

The hypothetical situation outlined above is grounded in reality in the case of *Hicklin v. Coney*, 290 U. S. 169, 78 L. Ed. 247 (1933). In that case, the State of South Carolina had imposed a tax on interstate motor bus operators based on carrying capacity. Unlike the Tennessee act construed in the *Interstate Transit, Inc.*, case, *supra*, the proceeds of the tax in *Hicklin v. Coney*, *supra*, were directly allocated to the maintenance of State highways. The tax was attacked as contravening the commerce clause of the Federal Constitution and in support of this argument the taxpayer relied heavily upon the case of *Interstate Transit, Inc., v. Lindsey*. In this connection, the argument was advanced that the tax in question bore no reasonable relationship to the use of the State roads and was, for this reason, unconstitutional.

The Supreme Court, in sustaining the constitutionality of the controverted tax, held that the levy was imposed for the privilege of using the State roads since the proceeds of the tax were allocated to the maintenance of public highways. Having determined that the tax was imposed for a proper purpose, i.e. for the privilege of using the State roads, the Supreme Court declared that the considerations implicit in the *Interstate Transit, Inc.*, case, *supra*, relative to the relationship between road use and the amount of

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"Thus, in *Central Greyhound Lines v. Mealey*, 334 U. S. 653, 92 L. Ed. 1633 (1948), this Court held unconstitutional a New York [illegible] tax on utility gross receipts as applied to an interstate bus operator, but expressly held that the tax would be valid if apportioned to mileage within New York. *The proceeds of this tax were not applicable to road construction and maintenance, and it was obviously not a tax upon the privilege of using the State's highways because it applied to all types of utilities.*

the tax were completely immaterial. In this connection the Court said at page 173:

> "Appellant insists that an undue burden is placed upon interstate commerce because the license fees are based on the 'carrying capacity' of the vehicles. The State court held that the fees 'are collected, as provided for by section 8517, for the purpose of maintaining the public highways over which such motor vehicles shall operate, as compensation for their use.' The statute provides for the segregation, for this purpose, of the moneys collected. See *Clark v. Poor*, 274 U. S. 554, 557, 71 L. ed. 1199-1201, 47 S. Ct. 702. In this view the fees are not open to the objection raised in *Interstate Transit, Inc., v. Lindsey*, 283 U. S. 183, 186, 188."

In *Sprout v. South Bend*, 277 U. S. 163, 72 L. Ed. 833 (1928), an ordinance of South Bend, Indiana, prohibited (with exceptions not here material) the operation of any motor bus within the city limits unless the bus was licensed by the city. The license fee varied with the seating capacity of each bus, the tax being $50.00 a year for buses which would seat twelve persons. The fee applied alike to buses operating wholly within the city and to those operating from points within to points without. The ordinance made no distinction between buses engaged exclusively in interstate commerce, those engaged exclusively in intrastate commerce, and those engaged in both classes of commerce. The proceeds of the tax were *not* allocated by the terms of the ordinance to the maintenance of the city streets.

The taxpayer, who operated a motor bus, conducted a business which was primarily interstate in character. Upon his refusal to comply with the ordinance in question, the taxpayer was fined by the State courts. On appeal to the Supreme Court, the argument was advanced that

the ordinance placed an invalid burden upon interstate commerce.

The Supreme Court held that the license fee could not be sustained as an exercise of the police power which permitted, in certain cases, the regulation of interstate carriers. In this connection, the Court found that it did "not appear that the license fee here in question was imposed as an incident of such a scheme of municipal regulation; nor that the proceeds were applied to defraying the expenses of such regulation; nor that the amount collected under the ordinance was no more than was reasonably required for such a purpose."

The Court then observed that a State could, consistent with the commerce clause, impose a reasonable tax for the privilege of using its roads. In holding that the license fee in question was not such a tax, however, the Court said at page 170:

> "But no part of the license fee here in question may be assumed to have been prescribed for that purpose. A flat tax, substantial in amount and the same for buses plying the streets continuously in local service and for buses making, as do many interstate buses, only a single trip daily, could hardly have been designed as a measure of the cost or value of the use of the highways. And there is *no suggestion* either in the language of the ordinance or in the construction put upon it by the Supreme Court of Indiana, *that the proceeds of the license fees are, in any part, to be applied to the construction or maintenance of the city streets.*" (Italics supplied.)

The Court then held that the tax was, in substance, a levy on the privilege of engaging in interstate commerce, and that it was, as a result, repugnant to the commerce clause.

This Court will observe that the pivotal question in the *Sprout* case, *supra*, was (as was the question in *Interstate Transit, Inc., v. Lindsey, supra*) whether the tax in question was imposed upon the privilege of using the public highways. In both cases, this factor could not be established by the allocation of the tax proceeds. It became necessary in each case, therefore, to determine whether the tax was imposed upon the privilege of using the State's highways by determining whether the taxes bore some reasonable relationship to road use. And in each case, the Supreme Court found that the taxes were not geared to road use.

In the present case, we submit that the relationship of road use to the amount of the titling tax is completely irrelevant. This follows from the fact that the element of road use and its relationship to the tax is only important in determining whether the tax is imposed upon the privilege of using the State's roads. Since this question, i.e. whether the titling tax is imposed on the privilege of using the State highways, has already been answered in the affirmative in this case (because of the allocation of the tax proceeds to road funds) it becomes unnecessary to consider the relationship of road use to the amount of the tax.

E.

The Maryland Titling Tax is a Reasonable and Non-Discriminatory Levy.

We have pointed out in the preceding section of our brief that the Maryland titling tax has been expressly laid for the privilege of using the highways of this State. We have also pointed out that since the titling tax has been laid for a proper purpose, i.e. for the privilege of using the State roads, it is irrelevant that the tax is not geared to road use. Our argument has been that since the incidence of the titling tax is the privilege of using the State

roads, the tax should be held constitutional if it is reasonable in amount and non-discriminatory against interstate commerce. We submit that the tax here in question meet both of these last named tests.

It is of course immaterial to this case that Maryland charges other fees in connection with the use of its highways, as for instance the 1 30¢ "seat mile" tax exacted by Section 293 of Article 56 (intrastate passenger motor vehicles) and Section 218 of Article 81 (interstate passenger motor vehicles) of the Maryland Annotated Code (1947 Supp.).[10] This Court said in the *Aero Mayflower* case, *supra*, 332 U. S. at 506-507; 92 L. Ed. at 108-109:

> "It is of no consequence that the state has seen fit to lay two exactions, substantially identical, rather than combine them into one, or that appellant pays other taxes which in fact are devoted to highway maintenance. For the state does not exceed its constitutional powers by imposing more than one form of tax. Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 72 L. Ed. 551, 48 S. Ct. 230, supra; Dixie Ohio Exp. Co. v. State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, 59 S. Ct. 435, supra."

See also *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80, 85; 92 L. Ed. 1832, 1838 (1948).

In determining whether the titling tax is or is not excessive or discriminatory, this Court should keep in mind the cardinal rule to the effect that the legislative act is presumed to be constitutional. *O'Gorman and Young v. Hartford Fire Insurance Co.*, 282 U. S. 251, 75 L. Ed. 324 (1931). This rule applies with equal force to taxes imposed against interstate motor carrier operations. *Dixie Ohio Express Co. v. Commission*, 306 U. S. 72, 77, 83 L. Ed. 495, (1939). For this reason, we submit that the burden must fall to the Ap-

[10] See the Court of Appeals discussion of these Sections (R. 33-34).

pellants to show beyond a reasonable doubt that the tax here involved is unreasonable or discriminatory. Clearly that burden has not been met in the case at bar.

Whether the titling tax is unreasonable must, in the final analysis, depend upon whether the tax is an exorbitant exaction for the use of the Maryland roads. It is, of course, a familiar fact to every member of this Court that heavy buses do much to cause general disrepair and ultimate impassibility of highways.[11] In making the titling tax apply to interstate motor bus carriers and in allocating the proceeds of that tax to the construction and maintenance of State roads, the General Assembly merely attempted to exact from the very operators who contribute so largely to the deterioration of the Maryland roads a small payment for highway construction and maintenance.

When the titling tax is viewed in its proper setting, therefore, can it be said that the Appellants have demonstrated beyond a reasonable doubt that the amount of the tax is excessive? We submit that there are no facts alleged in any of the three petitions for mandamus which are before this Court which could be the basis for sustaining this view.

The principle point made by the Appellants in their attempt to prove the titling tax excessive is the fact that

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[11] This Court has, on several occasions, taken judicial notice of the fact that the highways of a State suffer immeasurably through use by heavy interstate motor vehicles. For example, in *Continental Baking Co. v. Woodring*, 286 U. S. 352, 76 L. Ed. 1155 (1932), the Court sustained a tax imposed by the State of Kansas which was levied at the rate of five-tenths mills per gross ton mile. In the course of its opinion, the Court said at pages 365-366:

> "* * * Motor vehicles may properly be treated as a special class because their movement over the highways, as this Court has said 'is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves.'"

some buses (notably those operated by Capitol) travel only a few miles in Maryland. Based upon this fact, Appellants' position is that such operators would pay a titling tax equivalent to that paid by a local operator (assuming each purchased the same type of bus), but since they operate over only a few miles of the State's roads, the tax is unreasonable.

The complete answer to this position is to demonstrate that it is based on the erroneous premise that a tax imposed for the privilege of using the roads must in amount be a quid pro quo for the number of times the privilege is availed of. The premise is entirely erroneous. If a tax is truly a tax for the privilege of using the roads (and it has been shown by the decisions of the Supreme Court that, if the proceeds of the tax are allocated specifically to road use, the tax is such a tax), the privilege may be availed of as freely as the taxpayer desires. He can use as much or as little of the State highway facilities as he chooses. It is not a fault of the tax that the Appellants chose to make a scant use of the State's roads.

As a matter of fact each of the Appellants use Maryland roads to a far greater extent than the amounts alleged in their respective petitions. For instance, as of April 1, 1947, Capitol had five authorized interstate routes in Maryland and 40 units or buses registered for use on these routes. As of April 1, 1948, Capitol had five authorized interstate routes in Maryland and 46 units registered for use on these routes; as of December 1, 1948, Capitol had ten authorized interstate routes in Maryland; as of April 1, 1949, it had ten authorized interstate routes in Maryland and 45 registered units for use on these routes. As of September 15, 1949, it had ten authorized interstate routes in Maryland. By far the greatest portion of each of these routes, except the one

alleged in their petition from Cincinnati to Washington, is within the State of Maryland and over State roads. Most of them are from the District of Columbia to points in Maryland. It thus appears that the 9 miles of Maryland roads alleged in Capitol's petition has no meaning whatever.

Furthermore, the registered units or buses of each Appellant may be and are used interchangeably upon their various routes. In other words, the bus referred to in Capitol's petition for use on the run from Cincinnati to Washington can be, and probably is, used to an equal extent over its other routes in Maryland. It is to be noted also that Capitol alleges only the one route (containing the least Maryland mileage) and alleges its gross receipts derived only from this route with no mention of its gross receipts from the other routes. It thus appears that an entirely distorted over-all impression is conveyed by the allegations of the petition.

Since the effective date of the tax in question, a period of about 29 months, Capitol has titled three $3,750 vehicles and five $25,000 vehicles, making a total tax of $2,730.80. It is again emphasized that these vehicles may be and are used interchangeably over Capitol's various above mentioned routes.

Similar situations obtain with respect to Greyhound and Red Star.[12]

In *Morf v. Bingaman*, supra, as we have pointed out above, the Court said at page 412:

"As the tax is not on the use of the highways but on the privilege of using them, without specific limitation

[12] The information hereinabove set forth is obtained from the official records of the Commissioner of Motor Vehicles.

as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than a fee based on mileage, is not a forbidden burden on interstate commerce."

In Dixie Ohio Express Co v. Commission, supra, the Supreme Court found the tax to be a compensation for the privilege of using the highways of the State of Georgia in spite of the fact that by a specific Act of the Legislature all of the proceeds of the tax were allocated to rural post roads, *which were roads over which the taxpayer never travelled at all.*

In *Aero Mayflower Transit Co. v. Georgia Comm.*, 295 U. S. 285, 79 L. Ed. 1439 (1935) this Court answered precisely the same kind of argument under discussion here. In that case, the taxpayer, a private carrier for hire engaging in interstate commerce, contended that a Georgia tax levied against it was unreasonable since its use of the roads in Georgia was considerably less than other carriers. In discussing and answering this contention, the Court said at page 289:

"The appellant urges the objection that its use of roads in Georgia is less than that by other carriers engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. *The fee is for the privilege for a use as extensive as the carrier wills that it shall be.* There is nothing unreasonable or oppressive in a burden so imposed." (Italics supplied.)

We submit that the Appellants have not met the burden cast upon them in this case by showing merely that they use only a few miles of State roads in their operations.

The Appellants argue that the titling tax is unreasonable because a similar tax might be imposed by other States. However, this argument completely overlooks the fact that

flat taxes have been sustained many times by the Supreme Court and that each of these taxes was open to the same criticism. For example, every state in the nation could impose a flat tax similar to that passed upon in the recent decision of *Aero Mayflower Transit Co. v. Board of Railroad Commissioners*, 332 U. S. 495, 92 L. Ed. 99 (1947), and if a motor vehicle operator passed through each, he would be required to pay the tax of all. Moreover, it is no objection to the reasonableness of a levy against interstate motor vehicle operations that the tax is a flat amount. As the Supreme Court has said in the *Aero Mayflower Transit Co.* case, *supra*, at page 506, footnote 19:

> "Appellant claims that the $15 minimum fee is unreasonable since it is roughly ten times greater than the tax that would be required if the percentage standard provided in the statute were applied. To accept appellant's position would mean that a state could never impose a minimum fee, *but would have to adjust its taxes to the inevitable variations in the use of the highways made by various carriers.* The Federal Constitution does not require the state to elaborate a system of motor vehicle taxation which will reflect with exact precision every graduation in use. In return for the $15 fee appellant can do business grossing $3,000 per vehicle annually for operations on Montana roads. *Appellant was not wronged by its failure to make the full use of the highways permitted.*" (Italics supplied.)

The Maryland titling tax is not annual. It is imposed *but once* and its payment permits the taxpayer to use the highways with the vehicle upon which the tax has been paid as extensively and for as long a time as he desires. It is fair to assume that the average life of a bus is six years; perhaps it is even ten years. If we test the taxes which are involved in the instant case by considering the titling tax, paid in a lump sum, as pro-rated over the useful life of the vehicle, we find that, in the case of Capitol the total

tax is $505.17, or at a life of six years approximately $86.00 per year, and at the life of ten years approximately $50.00 per year. In the case of Greyhound, where the total tax is $580.00, at a six year pro-rate the tax would be $96.00 annually and at a ten year pro-rate, $58.00 annually. In the case of Red Star, where the total tax is $372.75, a six year pro-rate would give an annual tax of $62.00 and a ten year pro-rate would be approximately $37.00 a year. It is very difficult to argue seriously that any of these amounts, considered as an annual tax, are unreasonable exactions for the privilege of as an extensive use of the roads of Maryland as the taxpayer cares to exercise. This conclusion is fortified by comparison with many taxes which have heretofore been sustained by the Supreme Court as annual taxes. For example, in *Dixie Ohio Express Co. v. Commission, supra*, the Court held the Georgia maintenance tax valid as an excise for the privilege of the use of the roads despite the fact that it was an annual levy, imposed at the rates of $50.00 on each ton-and-one-half vehicle, $75.00 on each two-ton vehicle and $50.00 on each trailer and that it would cost the taxpayer-litigant approximately $6,000.00 a year.

The $6,000.00 paid by the taxpayer in the case last cited would permit the titling of $300,000.00 worth of motor buses each year in Maryland by any of the Appellants in this case. We do not understand that the activities of the Appellants in this State will require such extensive purchases.

These computations are admittedly conjectural; but they are not too far from accurate to show that the Maryland titling tax, payable but once in a bus's lifetime, is reasonable by comparison. At any rate, Appellants have not demonstrated that it is unreasonable, and the burden is upon

them. *Dixie Ohio Express Co. v. Commission, supra*, 306 U. S. at 77, 83 L. Ed. at 499.

The Court of Appeals found and Appellants have admitted that this is an "industry suit"; that there is no distinction between the three cases which would justify a ruling different in one case from another (R. 33). No contention is made that the tax, as applied to any particular one of the Appellants, as distinguished from the others, is unreasonable or discriminatory. The application of the tax as a whole to buses traveling in interstate commerce is attacked, regardless of the extent of operations in Maryland by any particular bus or carrier. Appellants' emphasis upon the alleged difference in Maryland line-miles of their three routes, therefore, seems immaterial to the case as presented. Neither of the three Appellants has alleged any facts which show that the "titling tax" is an unreasonable burden, financial or otherwise, upon its interstate operations. As shown above, neither of them has alleged any facts which show that the titling tax is as to it greater or more burdensome than other State taxes upon interstate motor carriers which have been upheld by this Court. *Aero Mayflower Transit Co. v. Board of R. R. Commissioners, supra*, 322 U. S. at 507, 92 L. Ed. at 109. In fact it is not even shown that the tax is more burdensome as to any one Appellant than it is as to the others, for we cannot tell from the petitions how many buses each Appellant operates or proposes to operate in Maryland.

To suggest "disparity of impact" of the tax, Appellants stress the fact that Capitol's route uses only 9 miles of Maryland roads whereas the other Appellants use 41 and 64 miles respectively. But the conclusion does not follow; for Capitol may, and judging by its gross receipts (R. 10) probably does, make for greater use of its 9 miles than do the other two of their respective routes. Further, there is

no necessary connection between number of trips or miles and number of buses; and it is the latter which determines the ultimate tax burden.

In any event, isolated cases of "disparity of impact" could be no objection, so long as the tax does not discriminate against interstate commerce. That it does not, is evident. The tax applies with equal force to all motor vehicles registered in Maryland, including those of intrastate and interstate carriers alike. Thus, it will be seen that interstate commerce is not singled out as the object of the levy to the exclusion of those carriers similarly situated who engage in local traffic. Since this is the type of discrimination prohibited by the commerce clause of the Federal Constitution, it follows, we submit, that the titling tax does not discriminate against interstate commerce.

Several cases decided by this Court have held that the vice characteristic of statutes which discriminate against interstate commerce is the fact that that type of commerce is selected to the exclusion of all other types for the purposes of a tax. Measures falling short of such conscious discrimination, however, have been sustained in a great majority of the cases. For example, in *Interstate Busses Corporation v. Blodgett*, 276 U. S. 245; 72 L. Ed. 551 (1928), this Court sustained a mileage tax levied against the operations of interstate carriers alone, where an entirely different type of tax was levied against intrastate carriers. In *Aero Mayflower Transit Co. v. Board of Railroad Commissioners*, 332 U. S. 495, 92 L. Ed. 99 (1947), the Supreme Court in sustaining the constitutionality of two Montana taxes levied at flat rates against interstate carriers stated the general rule, as follows, at page 501:

> "Neither exaction discriminates against interstate commerce. Each applies alike to local and interstate operations. Neither undertakes to tax traffic or move-

ments taking place outside of Montana or the gross returns from such movements, or to use such returns as a measure of the amount of the tax. Both levies apply exclusively to operations wholly within the State or the proceeds of such operations, although those operations are interstate in character."

We submit that since the Maryland titling tax applies alike to local and interstate vehicles, it is not discriminatory.

CONCLUSION

Upon the entire record in this case, it is our earnest contention that the Appellants have failed to meet the burden of proving that the Maryland titling tax is unreasonable in amount or discriminatory against interstate commerce. To the exact contrary, the conclusion is inescapable that the tax under question is no greater than those which have been previously sustained by the Supreme Court of the United States. Since the titling tax is not excessive in amount, nor discriminatory, and because it is levied solely upon the privilege of using the highways of this State, we maintain that the tax in no way contravenes the commerce clause of the Federal Constitution and that its constitutionality should be sustained. For these reasons, the decrees appealed from ought to be affirmed.

Respectfully submitted,

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APPENDIX

ANNOTATED CODE OF MARYLAND (1947 Supp.), Article 66½

21. (Vehicles Subject to Registration—Exceptions.) (a) Every motor vehicle, trailer, and semi-trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this Article except:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, transporters, dealers, lien holders, or non-residents or under a temporary registration permit issued by the Department as hereinafter authorized;

(2) Any implement of husbandry whether of a type otherwise subject to registration hereunder or not which is only incidentally operated or moved upon a highway;

(3) Any special mobile equipment as herein defined;

(4) All motor vehicles owned and used by the Government of the United States, State of Maryland, or any city, town, village or county of this State, and all motor vehicles owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, which officers are nationals of the state by which they are appointed and are not citizens of the United States and by any incorporated volunteer fire company incorporated in this State or rescue squad and used for fire-fighting or ambulance purposes are hereby exempted from the provisions of this sub-title requiring the payment of registration fees, but all such vehicles shall display identification markers approved by the Commissioner of Motor Vehicles.

(5) Any motor vehicle and trailer, known as the "40-8 box car", and owned and operated exclusively for social or charitable purposes by any voiture of the Forty and Eight of the American Legion, Department of Maryland, is hereby exempted from the provisions of this sub-title requiring the payment of registration fees, but every motor

vehicle and trailer shall display an identification marker bearing the number of the organization and the number of the local voiture (reading 40-8—local number).

22. (Application for Registration and Certificate of Title.). (a) Every owner of a vehicle subject to registration hereunder shall make application to the Department for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the Department and every such application shall bear the signature of the owner written with pen and ink and said signature shall be acknowledged by the owner before a person authorized to administer oaths and said application shall contain:

(1) The name in full, bona fide residence and mail address of the owner, or business address of the owner if a firm, association or corporation.

If the owner is an individual using a trade name, the correct name of the owner, with his address, must be furnished.

If the owner is a partnership or a joint enterprise, the correct names and addresses of the partners or joint enterprisers must be furnished.

If the owner is an unincorporated association or joint stock company, as contemplated in Section 123, of Article 23, of the Maryland Code (1939 Edition), there shall be designated the name and address of a resident agent, who shall be authorized to accept service in any law suit arising out of the operation of the motor vehicle being registered.

(2) A description of the vehicle, including insofar as the hereinafter specified date may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the engine number and the serial number of the vehicle.

(3) A statement of the applicant's title to and of all liens or encumbrances upon said vehicle and the names and ad-

dresses of all persons having any interest therein and the nature of every such interest.

(4) Such further information as may reasonably be required by the Department to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

(b) When such application refers to a new vehicle purchased from a dealer out of the State the application shall be accompanied by a sworn statement or a sworn bill of sale from the dealer from whom the purchase was made, showing any lien retained by the dealer.

(c) If the body design of any vehicle is changed from that set forth in the original title and registration, such fact shall be immediately communicated to the Department of Motor Vehicles, and the owner of any such vehicle shall apply for a new title and registration applicable to the changed description of such vehicle.